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ABSTRACT

This document contains case citations for 1996 in areas pertaining to school administration. The cases are categorized according to the topics of negligence, workers' compensation, administrator due process, discrimination against school administrators, and discrimination in hiring teachers for administrative positions. Negligence cases cover unsafe conditions on school property; off-school property or after-school hours; en route to and from school; special education; professional and support staff; sexual abuse; constitutional torts; and immunity. Workers' compensation cases include employee status, medical history, emotional injury, accidents, termination of benefits, notice of claim, percentage of disability/calculation of benefits, claim denial, and off premises/after school. Cases dealing with administrator-due process issues include discrimination in employment; substantive constitutional rights; procedure due process; dismissal, nonrenewal, demotion, and discipline; reduction in force and involuntary leaves of absence; contract disputes; and tenure. Those cases pertaining to discrimination against school administrators include race, religious, age, and sex discrimination; civil rights--Section 1983; First Amendment; freedom of association, speech, religion, and expression; disability; and marital status. Discrimination in hiring teachers for administrative positions are categorized on the basis of gender, race, and other reasons. (LMI)

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Case Citations 1996

Eighteenth Series (SCHOOL ADMINISTRATORS)
Edited by William J. Evans, Jr. Ed.D. Teacher/Administrator
Smithtown Central School District

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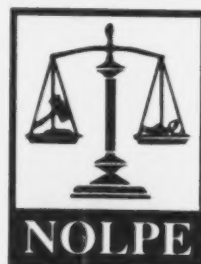
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The National Organization on Legal Problems of Education

Case Citations Negligence

Prepared by Michael L. Yates, J.D., Associate Professor,
Missouri Southern State College

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Unsafe Conditions on School Property

In an action for negligent maintenance of school grounds brought by a student who fell on a sheet of ice in the school courtyard which had not been salted or sanded, the school superintendent was not entitled to governmental immunity in the performance of a discretionary act because the injured student was a member of a foreseeable class of victims to whom the superintendent owed a special duty of protection. *Burns v. Board of Educ. of Stamford*, 638 A.2d 1 (Conn. 1994).

A high school student suffered severe injuries including amputation of his left arm when he was hit by an automobile while crossing a driveway on the school campus on his way from the locker room to the physical education field. Because public officials engaged in the performance of discretionary duties may not be held personally liable for mere negligence, the superintendent and principal could not be held personally liable for injuries sustained by the student absent allegations that their acts were corrupt, malicious, in bad faith or outside the scope of their employment. *Gunter v. Anders*, 441 S.E.2d 167 (N.C. Ct. App. 1994).

After an assistant principal broke up a fight between the plaintiff and several other students in a high school hallway, the plaintiff was punched in the eye by a student not involved in the original fight. The assistant principal was not negligent in failing to protect the student from further attack. He could not have reasonably foreseen that an assailant would sneak up and strike the student. Even if the assistant principal was negligent in failing to remove the student from the hallway, the "sucker punch" thrown by the unanticipated attacker was a "supervening cause" which broke the nexus between the negligence of the principal and the student's injury. *Randell v. Tulsa Indep. Sch. Dist. No. 1*, 889 P.2d 1264 (Okla. Ct. App. 1994).

In a negligence action brought by a parent who came to pick up books for her son and was struck by a student with a history of unprovoked violent attacks, a genuine issue of fact as to whether the school board was on notice that because of the assailant's violent nature and past actions he foreseeably presented a danger to persons lawfully

on school property precluded granting summary judgment. *Garufi v. School Bd. of Hillsborough County*, 613 So. 2d 1341 (Fla. Dist. Ct. App. 1993).

In an action brought against a middle school principal alleging negligent and wanton supervision of a student who was injured during a gymnastics class, the principal was immune from civil liability because his indirect supervisory responsibilities for the gym class involved the performance of a discretionary, not a ministerial, function. *Hayes ex rel. Hayes v. Walters*, 628 So. 2d 558 (Ala. 1993).

In an action for negligent supervision brought by the father of a kindergarten student who broke his arm when he impulsively jumped from a playground tower, the principal had no duty to inform the child's teacher of a rule prohibiting students from climbing to the top of the ladder, as the rule applied only to prekindergarten ECE students. His failure to inform the teacher was not a substantial factor in causing the student's injury. *Hunter v. Caddo Parish Sch. Bd.*, 627 So. 2d 772 (La. Ct. App. 1993).

In a wrongful death action brought when a second grader was killed when a gate located on school grounds swung open, pierced the van in which the student was riding and impaled him, the plaintiff failed to present substantial evidence that the child died as a result of the assistant principal's negligence. Although the assistant principal had access to the keys to the gate, so did at least five other people. The principal said he had locked the gate, and did not know who last used it. *Cason v. Oliver*, 604 So. 2d 760 (Ala. 1992).

A high school student suffered permanent damage when a fellow pupil threw a firecracker in his direction while the student was in the lavatory. The student sued the pupil, the city of Waterbury, and the assistant principal for negligent supervision. Citing a 19th century rule, the plaintiff moved to have all city residents and taxpayers disqualified from jury service. Finding that in modern society any direct or indirect pecuniary interests of residents or taxpayers in the outcome of litigation against the municipality to be too remote, the court refused to disqualify the potential jurors. *Bradford v. Brennan*, 631 A.2d 1165 (Conn. Super. Ct. 1992).

In a case where a nine-year-old student was severely burned during a "hands-on" experiment making sparklers in a summer enrichment program, there was sufficient evidence to sustain a jury finding that the chemistry teacher was an independent contractor performing inherently dangerous work, making the district vicariously liable for his negligence. *District of Columbia v. Howell*, 687 A.2d 501 (D.C. 1992).

The parents of a five-year-old girl were unsuccessful in an action against the school board and the school superintendent for injuries the child sustained while playing on a merry-go-round located on the school's playground. The girl injured her foot because the flooring was partially missing. The court held that the defendants had not willfully failed to guard or warn of the condition and, therefore, were not liable under the Recreational Property Act. *Edmondson v. Brooks County Bd. of Educ.*, 423 S.E.2d 413 (Ga. Ct. App. 1992).

A principal's conduct did not amount to gross negligence with regard to an injury sustained by an eleven-year-old when a steel soccer goal was pushed over on top of him at school, and thus the principal was entitled to governmental immunity. *Vermilya v. Dunham*, 489 N.W.2d 496 (Mich. Ct. App. 1992).

Parents brought an action against a school principal who spanked their child, alleging negligence, gross negligence and excessive force. The manner in which the swats were administered was in dispute. In affirming a verdict in favor of the principal, the court of appeals held that the trial court did not err in allowing deposition testimony of the child's teacher. The principal's designation of "parties" in response to the plaintiff's interrogatories properly identified the teacher, a defendant at the time, as a fact witness. *Fee v. Herndon*, 837 S.W.2d 834 (Tex. Ct. App. 1992).

In a case where the school board and principal were allegedly negligent in failing to establish safeguards to prevent the injuries received by a student when another student picked him up and threw him down on a concrete patio during recess, the defendants did not breach any legal duty because evidence of prior fights at the school in a grassy area did not support a finding that the board or principal knew or should have known that the patio area subjected the student to an unreasonable

risk of a sudden, unprovoked and unanticipated criminal attack. *Watts v. Wayne County Bd. of Educ.*, 412 S.E.2d 541 (Ga. Ct. App. 1991).

Since neither an elementary school principal nor a physical education teacher had any responsibility for the design or maintenance of light fixtures or light bulbs in a gymnasium, they could not be held liable in negligence for injuries suffered when a student was cut by glass falling from a light bulb that was shattered by a ball. *Beasley ex rel. Beasley v. Morton*, 564 So. 2d 45 (Ala. 1990).

In a case where a six-year-old student was injured when a classmate caused a pencil which the plaintiff had in his pants to puncture his leg while the children were preparing to enter the classroom, the school board was not entitled to sovereign immunity, since the claim was not that an inadequate number of supervisory personnel were assigned, but that the principal had negligently failed to carry out an operational duty to deploy personnel in accord with the school board manual. *Bonica v. Dade County Sch. Bd.*, 549 So. 2d 220 (Fla. Dist. Ct. App. 1989).

The parents of a child who died after a principal allegedly failed to call an ambulance and render adequate first aid sued the principal and school district. The court held that the principal's alleged acts and omissions were operational and thus were subject to liability if they were not performed with ordinary care. *Czaplicki v. Gooding Joint Sch. Dist.*, 775 P.2d 640 (Idaho 1989).

Off School Property or After School Hours

A fourth-grade student suffered an eye injury while observing a solar eclipse. The incident occurred after school, and there was a factual dispute whether the student had been given permission to participate with an extended day program in watching the eclipse. The court held that the school board had a duty to supervise students as long as they were on school premises regardless of whether they were actually attending school or participating in school-sponsored activities. *Ver-sprill v. School Bd. of Orange County*, 641 So. 2d 883 (Fla. Dist. Ct. App. 1994).

Three years after suffering internal injuries including a ruptured spleen when tackled during the initial scrimmage, the first female football player in the school's history and her mother filed a \$1.25 million lawsuit alleging that school authorities negligently failed to warn them of the potential risk of injury inherent in playing football. In granting summary judgment for the defendants, the court held the possibility of injury to a voluntary participant in a varsity high school football game was normal, obvious, and the usual incident of the activity, and thus did not trigger the duty to warn on the part of the school board. *Hammond v. Board of Educ. of Carroll County*, 639 A.2d 223 (Md. Ct. Spec. App. 1994).

Where a fourth-grade student was injured in an after-school altercation when he returned to the building to find his sister, the school board and principal were not negligent in supervising the dismissal of students. While it was foressable that parents will occasionally send children back into the building, it is unreasonable and unworkable to require a school to immediately intercept such children. *Hickingbottom v. Orleans Parish Sch. Bd.*, 623 So. 2d 1363 (La. Ct. App. 1993).

In a suit brought by a referee, who was assaulted by the father of a student who was defeated in a wrestling match, against the school board, principal and athletic director, the court held that adoption of the high school athletic association's rules did not create a special duty exception to the rule that a public entity is not liable for the negligent performance of its governmental functions, and that the principal and athletic director were acting within the scope of their duties. *Perry v. Board of Educ., Gouverneur Cent. Sch. Dist.*, 592 N.Y.S.2d 493 (N.Y. App. Div. 1993).

A student who was cut by a knife from mid-back to rib cage during an altercation after school hours in the high school parking lot with a student who had previously cut him during lunch period, brought a negligence action against the assistant principal in charge of discipline for failing to identify the assailant and remove him from school premises, and the board of education for negligently training and supervising the principal. The student's injuries were caused, not by any negligence of the principal or board, but by the student's own conduct in refusing to identify the classmate who accosted

him in the lunchroom and by seeking him out in the parking lot after school. *Sapp v. Effingham County Bd. of Educ.*, 409 S.E.2d 89 (Ga. Ct. App. 1991).

In an action where the petitioner was injured while playing basketball on an elementary school court and the superintendent participated in the game and witnessed the injury, the school district acquired actual knowledge of the essential facts of the petitioner's claim even though the superintendent was not acting in his official capacity at the time of the injury. The court, therefore, granted the plaintiff's petition to file a late notice of a claim. *Ambrosano v. Canajoharie Cent. Sch. Dist.*, 571 N.Y.S.2d 612 (N.Y. App. Div. 1991).

In a case where a nine-year-old girl experienced partial loss of vision after she was hit in the eye by a neighborhood boy while she was waiting for the school doors to open, the school district did not engage in willful and wanton misconduct so as to be liable for the girl's injuries. When the girl's father contacted the principal regarding his daughter's harassment by an older student, the principal changed the latter's bus stop and took other precautions to protect the student. *Templar v. Decatur Pub. Sch. Dist.*, 538 N.E.2d 195 (Ill. App. Ct. 1989).

A school district could not be held liable for injuries sustained by a high school cheerleader while attending a privately sponsored summer cheerleading clinic. *Rollins v. Blair*, 767 P.2d 328 (Mont. 1989).

En route to and from School

Where a student was shot in the eye with a paintball gun by another student after they unloaded from a school bus, the school district owed a duty of care to protect the plaintiff after the bus driver learned of the student's carrying some form of gun in violation of school board rules, and was not entitled to summary judgment on the plaintiff's negligence claim. *Anderson v. Shaughnessy*, 519 N.W.2d 229 (Minn. Ct. App. 1994).

In an action brought against the school board where a student was killed when struck by a vehicle while crossing the highway to get to his school bus,

the claim was denied because at the time of the negligent acts complained of, the bus driver, who had not informed the principal that she could stop the bus on the side of the road where the student would not need to cross the highway, was not operating the bus in the course of her employment. *Newgent v. Buncombe County Bd. of Educ.*, 442 S.E.2d 158 (N.C. Ct. App. 1994).

In a case where a student suffered fatal injuries in an automobile accident while traveling to a swim meet allegedly caused by the negligence of the school district, the driver of the car, a volunteer driving coach, was a school district employee for purposes of indemnification. *Murray v. Zarger*, 642 A.2d 575 (Pa. Commw. Ct. 1994).

When a student was struck by a van and killed while crossing a busy street to reach his bus stop, the bus driver was not negligent in failing to activate the flashing red lights on the bus as he approached the bus stop. The school district's design of the bus route and placement of bus stops were immune discretionary functions. *Smith v. Weber County Sch. Dist.*, 877 P.2d 1276 (Utah Ct. App. 1994).

A school bus driver and school district owed student passengers the highest standard of care. They violated that duty and were negligent as a matter of law, thus liable for the death of a thirteen-year-old student who was killed when struck by a car while crossing the road after exiting the bus. Evidence was uncontested that the driver did not use a stop sign or flashing lights when discharging the student, permitted the child to go behind the bus before crossing the highway, and did not keep the child in view until she was safely across the street, all in violation of legislative enactments specifically designed to protect the safety of children. *Yurkovich v. Rose*, 847 P.2d 925 (Wash. Ct. App. 1993).

In an action brought by a student who was injured when he was struck by a truck while attempting to reach his assigned school bus stop, the court held that the school board and principal had not waived, by the purchase of liability insurance, their governmental immunity. The court rejected the plaintiff's assertion that exclusionary language in the insurance policy for transportation of students did not apply to injuries associated with negligent design of school bus routes and stop

locations. *Beatty v. Charlotte-Mecklenburg Bd. of Educ.*, 394 S.E.2d 242 (N.C. Ct. App. 1990).

Special Education

In a negligent supervision action, the parents of a thirteen-year-old special education student who had sexual intercourse with an eighteen-year-old special education student in an old storage building on school grounds during the school day argued that the school board was strictly liable under the doctrine of attractive nuisance or building in ruin. The court found no breach of duty to supervise and that the old building, though unlocked and in need of repair, did not present an unreasonable risk of harm and did not cause the plaintiff's damages. *L.K. v. Reed*, 631 So. 2d 604 (La. Ct. App. 1994).

A disabled elementary school student and her mother brought an action against a school principal, nurse, and the supervisor of special education seeking damages for injuries the student allegedly suffered because an aide refused to catheterize her. The court held that the discretionary nature of the actions of the school principal, nurse, and supervisor of education in supervising and retaining the aide entitled them to qualified immunity from claims that they supervised and retained an aide negligently and in a willfully and wantonly deficient manner. *Nance ex rel. Nance v. Matthews*, 622 So. 2d 297 (Ala. 1993).

A school principal permitted a mentally handicapped student with behavior problems to leave class and stay with the janitor until he could return to class and behave. While under the janitor's supervision, the student suffered a head injury wrestling with another student in the hallway. A genuine issue of material fact as to whether the school district exercised in a grossly negligent manner its duty to supervise by placing a mentally handicapped student under the supervision of a janitor precluded granting a summary judgment. *Grooms v. Marlboro County Sch. Dist.*, 414 S.E.2d 802 (S.C. Ct. App. 1992).

The mother of an educable mentally handicapped child unsuccessfully brought an action against the teacher, principal and school board alleging that the student was molested by another student while the teacher was out of the room, and that the defendants' negligence and wantonness

allowed the molestation to occur. The court placed little emphasis on an affidavit of the plaintiff's expert which asserted that leaving mentally retarded students alone for any length of time fails to meet the expected standard of care. *B.M. v. Crosby*, 581 So. 2d 842 (Ala. 1991).

Professional and Support Staff

A teacher who was injured when she attempted to prevent an assault on a student by another student alleged that school officials knew of the violent propensities of the assaultive student and should have removed him from school prior to the incident. Since pupil placement is a matter of educational policy, the responsibility of which lies within the professional judgment and discretion of the administration, the school board could not be found negligent for allowing the student to remain in the school. *Brady v. Board of Educ. of N.Y.*, 602 N.Y.S.2d 892 (N.Y. App. Div. 1993).

In a negligence action brought by the father of a victim of a suicide pact, junior high school counselors had a duty to use reasonable means to attempt to prevent a suicide when they were on notice of an adolescent student's suicidal intent, and breached that duty by failing to inform the parent of suicidal statements attributed to the child by fellow students. *Eisel v. Board of Educ. of Montgomery County*, 597 A.2d 447 (Md. 1991).

In a negligence action to recover damages for personal injuries, a school psychologist, who was raped and sodomized in a school annex building where she maintained an office, demonstrated the prima facie existence and breach of a special duty by the school board because she was able to establish her reasonable reliance upon their assurances that security measures had been taken for her protection. *Carole A. v. City of N.Y.*, 565 N.Y.S.2d 169 (N.Y. App. Div. 1991).

In a case where a teacher was assaulted by a perpetrator who entered the school building through a door wedged open with a glove to allow personnel access to the school on a day prior to the start of the school year when faculty were allowed to come in to set up their classrooms, the allegedly negligent actions of a school principal concerning whether a door to the school should be left unlocked was a discretionary function for which the school board

was not liable. *Doe v. Board of Educ. of the Memphis City Sch.*, 799 S.W.2d 246 (Tenn. Ct. App. 1990).

Where a volunteer teaching assistant brought a negligence action after being attacked and raped while at school, the court held that because the actions of the superintendent and the principal regarding the selection, training, and supervision of security personnel were found to require deliberation, decision making, and judgment, they were discretionary decisional acts for which immunity was available. *Giddings v. City of Detroit*, 444 N.W.2d 242 (Mich. Ct. App. 1989).

Sexual Abuse

In an action brought against a school board and teacher on behalf of a third-grade student who was sexually assaulted by two other girls in the school bathroom, it was not irrational for the jury to conclude that the defendants' negligence in failing to provide the requisite supervision was the proximate cause of the student's injuries. *Shante D. v. City of N.Y.*, 638 N.E.2d 962 (N.Y. App. Div. 1994).

A school principal and his secretary were not negligent in releasing from school an eleven-year-old child to the custody of her uncle who subsequently sexually assaulted and raped her. Releasing the child without the request of the parents in contravention of board policy was not negligence per se. The child had complained of illness, the school had attempted to locate her parents, and she showed no reluctance to leave with her uncle. *Snider v. Snider*, 855 S.W.2d 588 (Tenn. Ct. App. 1993).

A student had a firmly established constitutional right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to be free from sexual molestation by a state-employed school teacher. The superintendent and principal had an affirmative constitutionally based duty to protect her from such an intrusion into bodily integrity. A genuine dispute of material fact existed as to whether the superintendent and principal acted with deliberate indifference toward the student's constitutional rights, precluding summary judgment on issue of qualified immunity. *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137 (5th Cir. 1992).

An action was brought against a teacher for sexually molesting a child on an off-campus field trip, and the principal for negligence in failing to investigate reports that the teacher had molested other students, and for allowing the teacher to transport a performing arts group, of which the victim was a member, on field trips in his personal vehicle in violation of school policy. In upholding a jury verdict in favor of the principal, the court of appeals held that the trial court could properly refuse to give a requested charge to the jury on the inability of a child under the age of fourteen to consent to sexual intercourse when consent was relevant to the principal's claims of contributory negligence and assumption of the risk. **Robinson v. Roberts**, 423 S.E.2d 17 (Ga. Ct. App. 1992).

In a lawsuit alleging that a school bus driver and a teacher/coach enticed a minor student into homosexual activities, and that the principal and school board were negligent in hiring persons of known lesbian propensities, the court held that all claims occurring before the state's one-year prescriptive period for tort actions should be dismissed. The incidents complained of, although similar in nature, were successive rather than continuous torts. Evidence failed to establish that letters sent by the teacher requesting the student keep the relationship secret caused her to suffer mental incapacity sufficient to invoke the *contra non valentem agere nulla currit praescriptio* exception to the prescriptive period. **Landreneau v. Fruge**, 598 So. 2d 658 (La. Ct. App. 1992).

A school district could not be held liable for either the negligent hiring and retention or the negligent supervision of a librarian who engaged in oral sex with his student assistant absent evidence showing the district knew, or in the exercise of reasonable care, should have known that the librarian posed a risk of danger to students. Because another teacher who was informed of the librarian's alleged homosexual tendencies by a former student had no supervisory authority over the librarian, he had no duty to report the story and his knowledge could not be imputed to the school district. **Peck v. Siau**, 827 P.2d 1108 (Wash. Ct. App. 1992).

In a case where a kindergarten student found bleeding in the school restroom was allegedly sexually assaulted by two men on the playground, the victim's principal and teacher were not liable

for negligent supervision where a dispute existed as to whether the attack took place at the school and there was no evidence that the defendants had acted negligently so as to allow the assault to occur. **W.L.O. v. Smith**, 585 So. 2d 22 (Ala. 1991).

In a case where six elementary students alleged they had been sexually abused by their teacher, knowledge of the deputy superintendent, assistant superintendent, and principal of complaints that a teacher had fondled students, and that he had been arrested but acquitted on charges of sexual abuse, which the officials did not report to the superintendent or school board, rose at best to negligent inaction, and could not form the basis for a constitutional violation in a section 1983 action. **Thelma D. v. Board of Educ. of St. Louis**, 737 F. Supp. 541 (E.D. Mo. 1990).

A superintendent and a school board were not liable for the negligent hiring and retention of a principal who allegedly sexually assaulted a student, because even though the principal had previously resigned from another school due to a similar accusation, his employment recommendations contained no evidence that he was a pedophile and the defendants did not know or could not reasonably have known of the principal's tendencies. **Medlin v. Bass**, 398 S.E.2d 460 (N.C. 1990).

Constitutional Torts

In **Black by Black v. Indiana Area Sch. Dist.**, 985 F.2d 707 (3d Cir. 1993), the school district was not liable for the alleged sexual molestation of elementary school students by a bus driver.

In **D.R. by L.R. v. Middle Bucks Area Vocational Technical Sch.**, 972 F.2d 1364 (3d Cir. 1992), school officials were not responsible for the alleged sexual assault of two female students by male students in a unisex bathroom and darkroom of a graphic arts classroom. The Third Circuit Court of Appeals held that school officials were not liable in section 1983 claims for the sexual assault of students by private actors. The officials did not act pursuant to a policy or custom or with deliberate indifference to the rights of students. Nor was there a special relationship created by compulsory school attendance sufficient to impose an affirmative duty to protect students from acts of private violence.

A high school student who was sexually assaulted by her teacher unsuccessfully brought a section 1983 action against the school board and principal. While there may have been negligence on the part of the defendants to investigate rumors of inappropriate conduct by the teacher, liability in a section 1983 action must be predicated upon a deliberate deprivation of constitutional rights. *Gates v. Unified Sch. Dist. No. 449*, 996 F.2d 1035 (10th Cir. 1993).

The parents of a student who was allegedly sexually molested by her fourth-grade teacher filed suit against the school board seeking damages for negligent hiring and supervision, and violation of section 1983. The negligence claims were dismissed based on governmental immunity. Summary judgment was granted for the defendants on the section 1983 claim because neither board members nor the superintendent knew or had reason to know of the allegations of sexual misconduct until after the teacher was suspended. *Jones v. Board of Educ. of Sch. Dist. 50*, 854 P.2d 1386 (Colo. Ct. App. 1993).

Mere negligence on the part of a state actor does not constitute a deprivation of due process under the Constitution. A section 1983 claim based on due process must involve either intentional conduct or deliberate indifference, recklessness, or gross negligence. *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137 (5th Cir. 1992).

A school counselor and vice principal did not have a constitutional duty to notify a fifteen-year-old pregnant student's parents of her pregnancy or decision to have an abortion. *Arnold v. Board of Educ. of Escambia County*, 754 F. Supp. 853 (S.D. Ala. 1990).

Immunity

An action seeking recovery for injuries sustained by a student who fell against a pumphouse on a school playground during school hours was dismissed on grounds of governmental immunity. Although school districts were not immune under the school code for alleged negligent failure to provide safe equipment on school premises, they were entitled to immunity under a provision of the tort immunity act granting public entities immunity

from liability for injuries on public property used for recreational purposes. *Lewis v. Jasper County Sch. Dist. No. 1*, 629 N.E. 2d 1227 (Ill. App. Ct. 1994).

In a case where a second-grade student hung himself at home after watching a film at school about an amputee who tried to commit suicide before learning to deal with his disability, the school board and superintendent were acting within the scope of their authority in allowing the film to be shown, and were entitled to absolute governmental immunity. *Nalepa v. Plymouth-Canton Community Sch. Dist.*, 525 N.W.2d 897 (Mich. Ct. App. 1994).

In a case where a student was injured when he was struck by an automobile while crossing a driveway on the school campus, the court of appeals held that denying the plaintiff's motion to amend his complaint to assert that the board of education had waived sovereign immunity by purchase of liability insurance two and one-half years after the plaintiff learned of the purchase was not an abuse of discretion. *Gunter v. Anders*, 444 S.E.2d 685 (N.C. Ct. App. 1994).

In an action where a student died from injuries sustained when a fellow student beat and kicked him in a school hallway between classes, summary judgment was granted to the principal and the teacher on grounds of official immunity. The duties of maintaining discipline and monitoring hallways between classes is a discretionary function protected by official immunity, and the purchase of liability insurance by the teacher and principal did not serve to waive their immunity. *Guthrie v. Irons*, 439 S.E.2d 732 (Ga. Ct. App. 1993).

A sixth-grade girl was injured when she was pushed off a wall into a sandbox and either hit her head on a bottle or on the concrete floor of the sandbox. The school district had statutory immunity if the child's injuries resulted from falling on a bottle in the sandbox, absent express knowledge that bottles were in the sandbox at the time of the fall. The school's express knowledge that the sandbox contained an inadequate amount of sand precluded statutory immunity on the claim that the child suffered injury by hitting exposed concrete footing. *Chastain v. Clark County Sch. Dist.*, 866 P.2d 286 (Nev. 1993).

The parents of a student who was viciously beaten in a gym class by two students who were roaming the hallways alleged that the school district, the principal, and the physical education teacher were negligent in failing to supervise the class and in allowing students to roam the halls. Claims against the defendants were dismissed on the grounds of governmental immunity. The state immunity statute created an exception to the general waiver of immunity in negligent actions for injuries arising out of assault or battery. *Ledfors v. Emery County Sch. Dist.*, 849 P.2d 1162 (Utah 1993).

A school principal's decisions with respect to supervision of a child who had been struck by a

car while crossing the street on the way home after a school outing were discretionary, not ministerial and, therefore, the principal was entitled to the defense of official immunity. *Lewis v. McDowell*, 390 S.E.2d 605 (Ga. Ct. App. 1990).

The court held that a school teacher and assistant principal were not "public officers" and, therefore, were not immune from suit by reason of the doctrine of official immunity in a negligence action to recover for injuries sustained when a student walked between two parked school buses, lost her balance, fell into the street, and was struck by an automobile. *Jackson v. Roberts*, 774 S.W.2d 860 (Mo. Ct. App. 1989).

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Case Citations Workers' Compensation

Prepared by William J. Evans, Jr. Ed.D., Teacher/Administrator
Smithtown Central School District

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Employee Status

In an unusual action, an Oregon school district moved for summary judgment on the grounds that a student's exclusive remedy for his injury was under workers' compensation law. The student was injured while putting away tables in the school cafeteria. The court granted the motion finding a fourth-grade student a "worker" based on his participation in a program where he worked in the school cafeteria in exchange for free lunches. The lunches he received were recognized as remuneration under the applicable law. *Clevidence v. Portland Sch. Dist. No. 1*, 866 P.2d 492 (Or. Ct. App. 1994).

The sole issue in a Colorado compensation case was whether an injured, part-time high school athletic referee was an independent contractor or an employee of the school district. In examining the circumstances, the referee retained sole discretion and control over his officiating duties, and no school district employee had the ability to dismiss him during a game. He was paid on a lump-sum basis with no deductions taken for tax or other purposes. He furnished his own uniforms and transportation. Using the "control" test of whether a relationship is employer-employee, the court set aside the order finding him an employee. *Brighton Sch. Dist. v. Lyons*, 873 P.2d 26 (Colo. Ct. App. 1994).

A woman applied for a position as a substitute bus driver for a Georgia school district. During a two-and-a-half-week training session she was injured when she slipped and fell walking from a school bus to her car. Her application for benefits was denied as she was not an employee at the time of her injury and there was no guarantee of employment when she completed the training. *North v. Floyd County Bd. of Educ.*, 442 S.E.2d 809 (Ga. Ct. App. 1994).

A school custodian was injured at work when a school bus driver negligently allowed his school bus to roll forward pinning the custodian against another vehicle. The custodian brought a civil suit against the board of education and entered into a settlement of his workers' compensation claim against the board. The board argued that the custodian was improperly allowed to repudiate his previous position that he was injured in the course of his employment in order to obtain further

remuneration from the board in a civil action. The court disagreed explaining that an injured employee of a governmental entity may sue in the work place, so long as the injured employee does not work in a job related to the that of the employee who caused the injury. *Holmes County Sch. Bd. v. Duffell*, 630 So. 2d 639 (Fla. Ct. App. 1994).

An Arkansas school bus driver was also employed full time at another job. Following a bus-related injury she sought temporary total disability payments during her recovery. The court held that she could not receive benefits while holding "any other employment." However, since she was working two jobs when she was injured, the second job was not "any other employment" undertaken in the place of her part-time bus driving job. *Stevens v. Mountain Home Sch. Dist.*, 850 S.W.2d 355 (Ark. Ct. App. 1993).

A former high school and college baseball player volunteered to act as an assistant pitching coach for a Colorado high school. While standing in the team's dugout during a game, he was struck in the face by a line drive. His action for employee benefits was denied as the head baseball coach was not found to have the authority to appoint persons to the "office" of volunteer assistant coach. Therefore, he did not qualify as an employee entitled to benefits. *Mesa County Valley Sch. Dist. No. 51 v. Goletz*, 821 P.2d 785 (Colo. 1991).

A Pennsylvania workfare participant injured his back while employed as a school maintenance worker. His award of workers' compensation benefits was unsuccessfully challenged by the school district. The court held that, for the purpose of workers' compensation liability, since the district exercised immediate control over the worker he was their employee, rather than one of the Department of Public Welfare. *Chichester Sch. Dist. v. Workman's Compensation Appeal Bd.*, 592 A.2d 774 (Pa. Commw. Ct. 1991).

Medical History

A worker appealed a denial of workers' compensation benefits for an injury she sustained while employed as a cook for a New Mexico school district. At issue was whether the denial could be based on a determination that the employee knowingly

and willfully made a false statement on which the employer relied. The court adopted a new test for determining the adequacy of questions asked of potential employees. This test stressed foreseeability by the applicant that the employer would rely on the applicant's answers concerning his or her medical history. The case was remanded for further action consistent with this new test. *LaMay v. Roswell Indep. Sch. Dist.*, 882 P.2d 559 (N.M. Ct. App. 1994).

Another Pennsylvania employee sought benefits for cancer of the lung he alleged was due to work-related asbestos exposure. He died while the case was in litigation and his widow filed a fatal claim petition for compensation. The court upheld the claim as all three medical witnesses established that the worker's disease was caused by exposure to asbestos. Although the employee had been a smoker, and he had worked earlier in his career at an occupation which exposed him to asbestos, the period of employment with the school district still fell within the latency period. *School Dist. of Phila. v. Workmen's Appeal Bd. (Polk)*, 640 A.2d 502 (Pa. Commw. Ct. 1994).

The driver of a North Dakota school district's van unsuccessfully appealed the denial of her workers' compensation claim. The chemical sensitivity she attributed to gasoline fumes from the van was not found traceable to employment with the school district. There was conflicting evidence as to the van's emissions, as well as conflicting medical reports concerning the driver's illness. *Halseth v. North Dakota Workers' Compensation Bureau*, 514 N.W.2d 371 (N.D. 1994).

A Pennsylvania school custodian was unable to provide unequivocal medical evidence of a causal relationship between her work and an injury to her back. The failure of the referee to rule on the submission of evidence that the employee was aged, obese, depressed, and female was held harmless. There was nothing to indicate that factors of age, obesity, or sex were relied on in referee's decision. *Bennett v. Workmen's Compensation Appeal Bd.*, 629 A.2d 208 (Pa. Commw. Ct. 1993).

A pre-existing back condition prevented an injured bus driver from receiving an award of benefits. She suffered the injury when she picked up a piece of paper from the floor of her bus. While

cleaning the bus was considered a part of her employment duties, the Florida court held the injury was a result of normal movement and the pre-existing condition, not aggravated by her employment. *Hillsborough County Sch. Bd. v. Williams*, 601 So. 2d 624 (Fla. Ct. App. 1992).

A Kentucky teacher with a serious allergy problem filed for workers' compensation benefits alleging an occupational disability due to irritants in the work place. In denying the claim, the court cited evidence that the teacher's symptoms were triggered by a wide variety of common substances. Where a worker's sensitivities are so wide-ranging it is not enough that the worker is symptomatic at work, for this does not prove the worker suffered an increased risk due to the employment. *Champion v. Beale*, 833 S.W.2d 799 (Ky. 1992).

A Florida school board employee was injured when the brace she wore on her leg gave way causing her to fall and fracture her ankle. The employee had needed a brace since contracting polio as a youth. The denial of her workers' compensation claim was upheld as the court saw the fall and injury as solely a result of her personal condition. The court explained that to compensate the employee for this type of injury would violate the legislative intention of the applicable statutes. *Leon County Sch. Bd. v. Grimes*, 548 So. 2d 205 (Fla. 1989).

Emotional Injury

A Michigan case consolidated the appeal of three actions in which employees sought compensation for work-related emotional injuries. In the first two cases a school secretary and an art teacher had been denied compensation. In the third case a janitor was granted compensation. The court concluded that to establish a claim the claimant must prove: (1) a mental disability; (2) arising out of the actual events of employment, not unfounded perceptions thereof; and (3) those events contributed to, aggravated, or accelerated the mental disability. Using that analysis, the first two cases were reversed and the third upheld. Specifically, for the cases being reconsidered, a subjective rather than purely objective analysis was to be used to examine the significance of actual events of employment. *Gardner v. Van Buren Pub. Sch.*, 517 N.W.2d 1 (Mich. 1994).

The decision that a Pennsylvania school district had the burden to disprove a work-related connection between a slip and fall and an employee's psychiatric injury was reversed on appeal. Similarly reversed was the decision that a work-related psychiatric injury existed. That conclusion must be reached on the basis of unequivocal medical testimony. *School Dist. of Phila. v. Workmen's Compensation Appeal Bd. (Coe)*, 639 A.2d 1306 (Pa. Commw. Ct. 1994).

The wife of a deceased principal was awarded workers' compensation benefits. The Oklahoma school unsuccessfully challenged the award which was based on a finding of death due to work-related stress. Citing the medical testimony presented at trial, the court upheld the award explaining that only when competent evidence is lacking can the trial court's decision be overturned. *Ponca City Pub. Sch. v. Ritcheson*, 853 P.2d 782 (Okla. Ct. App. 1993).

An Oregon bus driver sought compensation for a back injury and for depression. She was unable to establish that the back injury was work related. Since she claimed her depression was a result of the back injury, she could not recover for depression based on an uncompensable injury. *Damm v. Washington County Sch. Dist. No. 7*, 846 P.2d 425 (Or. Ct. App. 1993).

A Michigan school secretary was unable to secure benefits for emotional injuries she sustained as the alleged result of a misconception her principal was distancing himself from her. The events which bothered her were seen as relatively innocuous and would not have bothered a reasonable employee. *Bach v. Flint Bd. of Educ.*, 494 N.W.2d 815 (Mich. Ct. App. 1992).

Also in Michigan, an art teacher sought compensation for an alleged mental disability. He was unable to establish actual work-related events which would sustain a claim. Under the applicable objective standard, the court held that even if the stresses resulted in hypersensitive or idiosyncratic reactions by the claimant, he was not entitled to benefits. *Boyle v. Detroit Bd. of Educ.*, 494 N.W.2d 818 (Mich. Ct. App. 1992).

A mental disorder, even if not accompanied by physical trauma to the body, was found a com-

pensable injury in a Connecticut action. A music teacher's mental injury was determined to have been as a result of unproven allegations of sexual misconduct by a student. *Crochiere v. Board of Educ. of Enfield*, 630 A.2d 1027 (Conn. 1993).

A Florida teacher was unable to prove that the cerebral hemorrhage he suffered arose out of his employment. The fact that he was involved in a stressful situation with an unruly student at the time of the hemorrhage was not sufficient. Specifically, the court pointed to the absence of evidence of physical touching or physical overexertion. *Zundell v. Dade County Sch. Bd.*, 609 So. 2d 1367 (Fla. Dist. Ct. App. 1992).

The fact that job stress may only have been a contributing cause of precipitation of a New York instructor's pre-existing mental condition did not mean that a compensable injury was not sustained. The term accident was determined to include mental injury caused by emotional distress over an extended period of time. *F. Cerami v. City of Rochester Sch. Dist.*, 590 N.Y.S.2d 306 (App. Div. 1992).

A New Mexico school aide sought compensation for psychological injury she allegedly sustained when a co-employee made a bomb threat demanding she be fired. In denying the claim, the court found the threat was rooted in personal animosity involving matters unrelated to employment. *Bader-Rondeau v. Truth or Consequences Mun. Sch.*, 824 P.2d 358 (N.M. Ct. App. 1992).

A Maine school district unsuccessfully sought review of a commission decision awarding workers' compensation benefits to a teacher for her work-related mental injury. The district sought determination of benefits through a comparison of the stress encountered by the average employee performing a similar job with the same duties. In this instance that would have been with a gifted and talented teacher who traveled between several schools coordinating a new and controversial program. The court upheld the commission's view that the appropriate comparison was of the stress experienced by the average employee generally. *Caron v. Maine Sch. Admin. Dist. No. 27*, 594 A.2d 560 (Me. 1991).

A Michigan school board employee sought benefits claiming mental disability as a result of on-the-job harassment. The claim was denied, but the workers' compensation appeals board reversed the decision. That decision was reversed by the court of appeals which held the employee was only entitled to compensation if her disability arose out of an actual event of harassment. The compensation board had based its award solely on the plaintiff's perception of harassment. *Greenwood v. Pontiac Bd. of Educ.*, 465 N.W.2d 362 (Mich. Ct. App. 1991).

A case in which an Arkansas widow sought compensation benefits for her teacher-husband's death was remanded to the compensation commission for a new decision. The commission, on second consideration, examined whether there was a close temporal relationship between the husband's heart attack and a stressful work-related examination. Following a denial of benefits, the widow sought appeal. Citing substantial evidence including testimony of the defendant's expert, the appeals court held that the teacher's attack, while sitting in his recliner approximately eighteen hours after taking the test, was not causally related to stress surrounding the test. *Mosley v. McGehee Sch. Dist.*, 816 S.W.2d 891 (Ark. Ct. App. 1991).

A New Mexico teacher was injured when she fell off a platform leading to a portable classroom. She was unsuccessful in her appeal from the compensation order. Evidence supported that the psychological condition from which the teacher was suffering was temporary, precluding an increase in her partial disability rating. In denying certain medical bills, the court explained that an injured worker cannot be compensated for independent medical treatment when the employer has indicated a willingness to furnish treatment, and has actively made such services available. *Bowles v. Los Lunas Sch.*, 781 P.2d 1178 (N.M. Ct. App. 1989).

A New York board of education was successful in an action challenging an employee's award under the Worker's Occupational Diseases Act. A teacher's mental disorder had developed over a period of twelve to sixteen months, and reached the level of suicidal depression after he was slapped by an eighth-grade girl. The court found the evidence did not establish that the slapping was an event which arose from a stress situation of a greater dimension

than that experienced by other teachers. *Board of Educ. of Chicago v. Industrial Comm'n*, 538 N.E.2d 830 (Ill. Ct. App. 1989).

Accidents

A Louisiana school board employee was injured when the folding chair upon which she was standing "jackknifed" causing her foot and leg to slip through the opening. She brought an action for damages against the chair manufacturer and her school district intervened alleging its entitlement to recovery for workers' compensation benefits. The court found that the employee failed to prove by a preponderance of the evidence that the chair was unreasonably dangerous in design or because of inadequate warning. Further, although standing on the chair may be a conceivable use, it is not a reasonably anticipated one. Finally, most people who use a folding chair as a stepladder utilize the front portion of the seat upon which to stand. *Myers v. American Seating Co.*, 637 So. 2d 791 (La. Ct. App. 1994).

An Oklahoma school district appealed the award of temporary total disability to a custodian who had allegedly inhaled harmful chemicals during a floor stripping process. The court upheld the award finding the medical expert had sufficient information to indicate the custodian had inhaled the chemicals. *Sequoyah Pub. Sch. v. Hazelwood*, 877 P.2d 1177 (Okla. Ct. App. 1994).

Although a Connecticut school custodian had been awarded workers' compensation benefits, he brought a personal injury action for the injuries sustained when he was thrown from and run over by a tractor driven by another custodian. The court held that the tractor was excluded from the statutory definition of a "motor vehicle" for the purpose of a motor vehicle exception to the exclusive remedy provision of the workers' compensation law. *Pinheiro v. Board of Educ.*, 620 A.2d 159 (Conn. Ct. App. 1993).

Termination of Benefits

An Alaskan school employee sought to challenge the constitutionality of a statute defining medical stability after his temporary total disability benefits

were terminated. The court found the employee without standing to sue as his benefits were terminated based on his return to work not because he reached medical stability. *Anchorage Sch. Dist. v. Murdock*, 873 P.2d 1291 (Alaska 1994).

Notice of Claim

A New Mexico custodian injured her shoulder in the course of her employment. Her claim for weekly benefits was denied as she failed to file in a timely manner. However, her claim for vocational rehabilitation benefits was not subject to the statute of limitations. Finally, where the value of an award is small, the court recognized that limiting an award of attorney fees to a percentage of its value would be inappropriate. *Benavidez v. Bloomfield Mun. Sch.*, 871 P.2d 9 (N.M. Ct. App. 1994).

An Iowa school employee injured his back in a work-related fall. He sought an extension to the two-year time limit on a claim for compensation. The court held the discovery rule, which would have allowed for a late claim, was not applicable where the worker knew of the injury at the time of the fall and of the employer's responsibility. *Nielsen v. Fremont-Mills Community Sch.*, 506 N.W.2d 173 (Iowa Ct. App. 1993).

An Alaska school district's continuing treatment guidelines were upheld in a case where treatment had been denied to a worker. The injured teacher's assistant had failed to timely submit the appropriate treatment plan. *Anchorage Sch. Dist. v. Hale*, 857 P.2d 1186 (Alaska 1993).

Percentage of Disability/ Calculation of Benefits

A Colorado elementary school teacher was injured when a rock thrown by a student struck her in the eye. As a result of the injury the teacher suffered from post-traumatic stress disorder which impaired her ability to function as a classroom teacher. However, she returned to employment as a school counselor at her preinjury rate of pay. It was determined that she had sustained a 30% permanent medical impairment as a result of the injury. Her workers' compensation award was based on this permanent impairment, even though it was recog-

nized that she had not suffered a 30% earnings reduction. The court upheld this award as under the standard set by the re-employment statute, benefits were to be limited to permanent medical impairment or a statutory scheduled payment whichever is less. This does not preclude a larger medical impairment based payment. *Turner v. City and County of Denver*, 867 P.2d 197 (Colo. Ct. App. 1993).

A Washington substitute school custodian was injured when a garbage can fell off its wheels and struck her leg. The trial court decision was reversed on appeal finding that under the statute, "temporary total disability" terminates as soon as claimant's condition allowed her to perform any kind of work. Further, the need for medical treatment did not preclude a finding that her earning power had been restored. *Hunter v. Bethel Sch. Dist.*, 859 P.2d 652 (Wash. Ct. App. 1993).

A Louisiana teacher sought workers' compensation benefits for injuries she suffered in separate incidents in which she was allegedly assaulted by students. Following the first injury, the school board paid benefits until the teacher returned to work. The court found the injuries from the second assault manifested themselves at that time and that the teacher failed to show that she was entitled to supplemental earnings benefits from the first incident. *Lee v. East Baton Rouge Parish Sch. Bd.*, 623 So. 2d 150 (La. Ct. App. 1993).

An injured Florida substitute bus driver appealed the manner in which his average weekly wage was calculated. The court recognized that his employment did not fit neatly into any of the statutory alternatives. However, basing his wage on the previous thirteen weeks, rather than the four weeks in which he had actually worked, was found appropriate. *Waldorf v. Jefferson County Sch. Bd.*, 622 So. 2d 515 (Fla. Ct. App. 1993).

A Montana school bus driver appealed the decision of the Workers' Compensation Court. In denying the appeal, the court determined that he had reached maximum healing after a 1986 neck injury but prior to a 1987 injury. Thus, 1987 law was appropriate in calculating benefits. Further, evidence supported that the driver was permanently partially rather than permanently totally disabled. His rehabilitation specialist, therapists, doctors, and a Rehabilitation Panel all determined that he could

engage in light work based upon his age, education, experience, aptitude, physical capabilities and limitations. *Kelly v. State Compensation Mut. Ins. Fund*, 835 P.2d 774 (Mont. 1992).

A vocational sewing teacher sought to establish her total disability after she severed a finger on her left hand in a cloth-cutting machine. The court reversed the compensation board's ruling in favor of the teacher. The claim of total disability was denied as the increasing loss of use of the teacher's left hand was not a separate and distinct disability from that which would normally follow her injury. *School Dist. of Phila. v. Workman's Compensation Appeal Bd. (Pittman)*, 603 A.2d 266 (Pa. Commw. Ct. 1992).

Following a work-related injury, a Florida custodian was awarded workers' compensation benefits based on his average weekly wage (AWW). When he returned to work, he was re-injured. His employer/carrier unsuccessfully challenged a subsequent compensation award. The court held that it would be unfair to penalize the custodian, who attempted to return to work at a lower wage, by computing an AAW based on the lower wage figure. *Pinellas County Sch. Bd. v. Higgins*, 597 So. 2d 355 (Fla. Ct. App. 1992).

A California worker who was injured during her employment as a teaching assistant was successful in her challenge of a workers' compensation appeals board decision disallowing temporary indemnity. The court held that since her full wages were less than the statutory minimum for calculating temporary indemnity, she was entitled to temporary disability payments at the statutory minimum rate throughout the period of her disability. *Hayes v. Workers' Compensation Appeals Bd.*, 261 Cal. Rptr. 908 (Ct. App. 1989).

A Florida employer sought review of an order for workers' compensation benefits. The court found the employer's past weekly contribution to the employee's retirement program was properly included when determining benefits for a job-related injury. *Hillsborough County Sch. Bd. v. Fliter*, 539 So. 2d 1145 (Fla. Dist. Ct. App. 1989).

A New Jersey widow sought continuation benefits for the two months a year she did not work as a teacher. The court determined that she was entitled

to the benefits as the collective bargaining agreement did not give her a choice between being a ten-month or twelve-month employee. *Sarisky v. E.R. Squibb and Sons, Inc.*, 559 A.2d 471 (N.J. Super. Ct. App. Div. 1989).

An Illinois school bus driver was injured when her bus collided with an automobile. She was successful in her action for an adjustment in her claim under the Workers' Compensation Act. The court found that an earlier decision that her surgery was not related to the accident was contrary to the evidence presented by her physician. The abbreviated physical examination performed by the employer's physician was seen as inadequate given the driver's symptoms. *Edgecomb v. Industrial Comm'n*, 536 N.E.2d 1364 (Ill. Ct. App. 1989).

An Oregon worker sought review of a workers' compensation board determination that her employer, who was now self-insured, rather than the former insurer, was responsible for her deteriorating back condition. The court reversed the decision, holding that a shift in responsibility to a subsequent employer or insurer requires the subsequent employment contribute independently to the need for treatment. Because the worker had not experienced a need for treatment as a result of her worsening condition, the court found no basis for shifting responsibility for that condition. *Columbia County Sch. Dist. v. Thurston*, 773 P.2d 1354 (Or. Ct. App. 1989).

Failure by a Minnesota school district to promptly report an employee's injury earned a penalty assessment from the workers' compensation division of the Department of Labor and Industry. The appeal of the decision was successful as the court determined that the penalty did not apply to an employer who fails to promptly report a work injury but pays full wages to the employee under a wage continuation program. *Urbanski v. Independent Sch. Dist.*, 280, 446 N.W.2d 388 (Minn. 1989).

Claim Denial

A Virginia school employee was unable to prove that her employer had acted in a manner which induced her to refrain from filing a claim. Their actions were seen as no more than would be ex-

pected from an employer conscientiously complying with the Workers' Compensation Act. *Cheski v. Arlington County Pub. Sch.*, 434 S.E.2d 353 (Va. Ct. App. 1993).

Compensation benefits were denied to a Wyoming school cafeteria worker who claimed permanent partial disability for a "tennis elbow" condition. The injury occurred over a period of time and arose out of repetitive lifting and stirring motions. The denial of benefits was upheld by the court on the basis that her impairment was not ratable under the American Medical Association Guide to the Evaluation of Permanent Impairment. *Allen v. Natrona County Sch. Dist. No. One*, 811 P.2d 1 (Wyo. 1991).

A custodian fell off the stage in a New York high school auditorium. The school district appealed his award of lost wages after his retirement. The court upheld the award as the employer was unable to show the custodian's loss of employment was solely due to economic or other causes unrelated to his injuries. *Phillips v. Elmira City Sch. Dist.*, 577 N.Y.S.2d 525 (App. Div. 1991).

The denial of workers' compensation benefits to a part-time school district assistant cook was upheld on appeal to the Supreme Court of North Dakota. The cook failed to establish the extent of her disability by refusing to return to work on a modified basis. *Risch v. Workers' Compensation Bureau*, 447 N.W.2d 308 (N.D. 1989).

Off Premises/After School

An assistant band director from Pennsylvania successfully withstood an appeal of compensation

benefits. The court held that returning from an evening Band Parent's event was an exception to the "going and coming" rule. Since the assistant director was going to be replacing the band director during a leave of absence, attending the event was seen as a "special mission" of ensuring the continued cooperation between the band director and the Band Parents. *City of Monessen Sch. Dist. v. Workmen's Compensation Appeal Bd.*, 624 A.2d 734 (Pa. Commw. Ct. 1993).

A Florida middle school teacher was injured during a student/teacher basketball game conducted during school hours. Teachers were required to participate in the game either as players or spectators. The court found the game an incident of her employment and thus awarded compensation. *Highlands County Sch. Bd. v. Savage*, 609 So. 2d 133 (Fla. Dist. Ct. App. 1992).

A New York court held the injury sustained by an untenured teacher participating in a donkey basketball game was compensable. The teacher had been encouraged by her principal to participate, and the injury was determined to have been in an activity promoted by her employer. *Midey v. Romulus Cent. Sch. Dist.*, 584 N.Y.S.2d 948 (App. Div. 1992).

A North Carolina school bus driver was injured in an automobile accident in his own automobile after leaving a required meeting for which he receives compensation. His suit for benefits was denied as the court held that when the driver left the meeting he was not traveling to a destination required by his employer, nor was he engaged in the furtherance of his employer's business. *Wright v. Wake County Pub. Sch.*, 405 S.E.2d 228 (N.C. Ct. App. 1991).

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Administrator Due Process Issues

Prepared by William Shula Ed.D., Superintendent,
Bethel-Tate Local Schools, Bethel, Ohio

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Discrimination in Employment

A white female elementary principal whose contract had been nonrenewed did not have a course of action for racial discrimination under the Illinois School Reform Act. The district court ruled that the purpose of the act was regulatory and the intended beneficiaries were students, not principals. The court held that the plaintiff's section 1983 and section 1981 claims were time-barred. *Asllani v. Board of Educ. of Chicago*, 845 F. Supp. 1209 (N.D. Ill. 1993).

A high school principal who had refused to recommend an applicant for a teaching/coaching position because of perceived homosexual tendencies was entitled to qualified immunity in a section 1983 action. In 1988, there was no clearly established line of authority proscribing an adverse action against civilian job applicants based on homosexual or perceived homosexual orientation. *Jantz v. Munci*, 976 F.2d 623 (10th Cir. 1992).

Substantive Constitutional Rights

An elementary principal challenged her demotion to a teaching position after expressing opposition to site-based decision councils and implementation of the Kentucky Reform Act. The federal court precluded summary judgment in favor of the board on the issue of whether the administrator's free speech rights had been violated by eliminating her right to a hearing before demotion. *Arney v. Campbell*, 856 F. Supp. 1203 (W.D. Ky. 1994).

A teacher-principal challenged his nonrenewal of contract based upon freedom of association, free speech rights and the inadequacy of grounds for nonrenewal. The court reasoned that his rights were not violated when the board used his education association activities as grounds for the decision. *Opdahl v. Zeeland Pub. Sch. Dist. No. 4*, 512 N.W.2d 444 (N.D. 1994).

A former principal brought suit against the superintendent and the district alleging his suspension and termination violated his right to free speech. He maintained that the criticisms of the reorganization plan of the district were a matter of public concern. The court of appeals ruled the

issues of fact outweighed the school's interest in the administration of the district. *Schiller v. Moore*, 30 F.3d 1281 (10th Cir. 1994).

A California school administrator's statement to a newspaper reporter, that he had been forced out of the school district and was required to sign a "gag" document preventing public comment, did not constitute commentary of public concern which would be necessary to maintain a section 1983 action. However, the money damage judgment remained since the administrator had been wrongly terminated under the California Education Code provisions governing layoffs. *Weber v. San Ramon Valley Unified Sch. Dist.*, 25 Cal. Rptr. 2d 69 (Cal. Ct. App. 1993).

An elementary principal spoke "forcefully" and criticized the school board decision to request a waiver of the make up of three school days because of a broken water pipe. Since the principal's right to free speech regarding an issue of public concern was well established, school board members were not entitled to qualified immunity with respect to the section 1983 action. *Carrillo v. Rostro*, 845 P.2d 130 (N.M. 1992).

The First Amendment rights of a superintendent were not violated where he had openly supported the incumbent board members for re-election. When the new members were elected by a large margin, the superintendent was relieved of his duties with pay. The court ruled in favor of the board because the close working relationship between the school board and the superintendent was essential. *Kinsey v. Salado Indep. Sch. Dist.*, 950 F.2d 988 (5th Cir. 1992).

Procedure Due Process

An assistant superintendent successfully challenged the contract termination. The governing board failed to give a forty-five-day written notice nonrenewal which is a statutory requirement. Proper notice affords the administrator possible changes in duties and assignment in sufficient time to seek other satisfactory employment. *Jenkins v. Inglewood Unified Sch. Dist.*, 41 Cal. Rptr. 2d 80 (Cal. App. 2d Dist. 1995).

The statutory notice and hearing requirements were satisfied in the nonrenewal of a school principal. The school district did not predetermine the outcome in the nonrenewal process by voting to "accept" the superintendent's recommendation to nonrenew a principal's contract prior to a hearing. The actual termination vote was taken after the hearing was held. *Temple Indep. Sch. Dist. v. English*, 896 S.W.2d 167 (Tex. 1995).

The criminal conviction of a high school principal on eight counts of official misconduct and indecent liberties with a child was upheld. The principal was unable to prevail that his defense counsel was ineffective. The defendant failed to show prejudice from the trial judge's ex parte communication with the prosecuting attorney who was the judge's son. *People v. Moffat*, 637 N.E.2d 465 (Ill. App. Ct. 1994).

This case concerned the constitutionality of the Chicago School Reform Act's elimination of tenure for public school principals and method of electing local school councils. The federal court reasoned that the statute did not deprive principals of a property interest because the previous statute had not created a vested right to tenure. *Pittman v. Chicago Bd. of Educ.*, 860 F. Supp 495 (N.D. Ill. 1994).

The former coordinator brought suit against the state commissioner of education for wrongful termination. The plaintiff gave up his position as the coordinator of a technology center due to a prior resignation as a school superintendent under charges of alleged financial misconduct. He was not entitled to a name-clearing hearing where the charges against him had not been publicly disseminated. The court held that the commissioner had not acted arbitrarily and capriciously. *Shepherd v. Boysen*, 849 F. Supp. 1168 (E.D.Ky. 1994).

An appeals court in Florida ruled that the teaching certificate of a forty-eight-year-old assistant principal was improperly suspended following his marriage to a sixteen-year-old student where no clear evidence of an inappropriate personal relationship prior to their marriage had been presented. The publicity surrounding the marriage could not be used to establish that his effectiveness as an administrator was impaired. *Tenbroeck v. Castor*, 640 So. 2d 164 (Fla. Dist. Ct. App. 1994).

A school supervisor was given adequate notice and hearing fulfilling due process requirements in the denial of career level III certification by the Tennessee State Board of Education. *Heywood v. State Bd. of Educ.*, 874 S.W.2d 57 (Tenn. Ct. App. 1993).

An Oklahoma superintendent failed to show the board demonstrated an unconstitutionally intolerable bias that would deny the superintendent due process resulting in his termination. Even though the board members displayed anger publicly toward the administrator and another member had an extenuating family relationship with one of the complainants. *Velharticky v. Independent Sch. Dist. No. 3 of Roger Mills County, Okla.*, 846 F. Supp. 941 (W.D.Okla. 1993).

The suspension of the teacher/principal with full pay and reassignment pending the outcome of grievance investigation did not result in a defacto termination during the probationary contract period which would entitle the administrator to a hearing. The court also reasoned that a discharge on grounds of poor performance, poor judgment, incompetence, or even insubordination is not stigmatizing. *Johnson v. Independent Sch. Dist. No. 281*, 494 N.W.2d 270 (Minn. 1992).

A principal who was suspended with pay for approximately two months prior to being transferred to another school was not deprived of protectable property interest. The school administrator, under Wisconsin statutes, did not have a constitutionally protected property interest in being able to go to work nor did he suffer a deprivation of a liberty interest. *Terry v. Woods*, 803 F. Supp. 1519 (E.D. Wis. 1992).

School administrators sought further review of a mandamus proceeding to compel their re-employment. A middle school principal who had been told by the personnel department to sign a senior high assistant principal contract form, subsequently had this contract nonrenewed, nonetheless had his principal position renewed because the board failed to nonrenew that position. *State ex rel. Smith v. Ethridge*, 605 N.E.2d 59 (Ohio 1992).

The district court of New York ruled a superintendent suspended with pay had no liberty or property infringements that would entitle the ad-

ministrator additional procedural due process safeguards. In the context of a high official with broad authority, due process would be satisfied if a post-suspension hearing was scheduled. *Watkins v. McConologue*, 820 F. Supp. 70 (S.D. N.Y. 1992).

A principal/chief administrator lost his due process claim that the State Board of Education, in a hearing to revoke his principal's certificate, denied him due process when it denied his motion to delay the hearing until the next day. The principal was able to produce evidence at the hearing late into the night. His request for an hour break had been granted, his witness testified fully, and the principal testified at length. In revoking the contract the committee concluded the principal exhibited a "lack of integrity and unprofessional" conduct. *Bills v. Arizona State Bd. of Educ.*, 819 P.2d 952 (Ariz. Ct. App. 1991).

Dismissal, Nonrenewal, Demotion, and Discipline

A former principal brought suit claiming section 1983 violations of slander and malicious prosecution against the school district and various employees. The court ruled that a state statute which provides that no member of a board of education or duly designated administrative officer shall be liable in a civil action based on a statement of charges against a school teacher did not apply to an action brought by a principal. Statements made by school officials during board proceedings were not absolutely privileged. *Mauzy v. Mexico Sch. Dist. No. 59*, 878 F. Supp. 153 (E.D. Md. 1995).

The plaintiffs, former assistant principals, lost their positions because of a reduction in force due to district financial problems. When the board secured additional funds they were still not reinstated, even though the record showed that they were better qualified and had more seniority than other successful candidates. The appeals court held that the assistant principals should have been reinstated in the order of seniority. *Barnes v. Walker County Bd. of Educ.*, 650 So. 2d 884 (Ala. Civ. App. 1994).

The Supreme Court of Mississippi ordered the reinstatement of a principal who permitted a student to pray over the school intercom. The school board

did not make a strong showing that a "lack of professional judgment" would be "other good cause" for suspending the principal. *Board of Trustees of Jackson Pub. Sch. Dist. v. Knox*, 638 So. 2d 1278 (Miss. 1994).

The chancellor exceeded his authority in becoming involved in a contract dispute over the re-employment of a local superintendent. The court reasoned that the school board did not violate superintendent's contract. *Community Sch. Bd. Nine v. Cortines*, 611 N.Y.S.2d 453 (N.Y. Sup. Ct. 1994).

The school board charged the superintendent with fraud and negligent representation in the management and supervision of the district's finances and to keep the board informed. The court ruled that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract has been violated. *Fort Ann Cent. Sch. Dist. v. Hogan*, 14 N.Y.S.2d 803 (N.Y. App. Div. 1994).

The Supreme Court of Mississippi upheld a school board's authority to reassign a principal to an assistant principal or to an appropriate administrative position other than principal. The board has this authority as long as proper review procedures are maintained and the decision is not deemed arbitrary or capricious. *Gelenter v. Greenville Mun. Separate Sch. Dist.*, 644 So. 2d 263 (Miss. 1994).

An assistant principal/building rental coordinator was transferred to a different school and teaching position without a formal notice of the action by the school board. The Supreme Court of South Carolina determined that the board's action was a violation of the procedures established by the State Teacher Employment Dismissal Act. The monetary loss of wages is a property interest which requires a conformity to the act. *Johnson v. Spartanburg County Sch. Dist. No. 7*, 444 S.E.2d 501 (S.C. 1994).

The Missouri Local School Board dismissed a teacher-principal during her contract in 1992 because of job performance dissatisfaction. The school board paid her full compensation for her contract. The court of appeals dismissed the plaintiff's petition as moot since her contract had ex-

pired. *Richardson v. Harden-Central C-11 Pub. Sch.*, 884 S.W.2d 53 (Mo. App. 1994).

The Supreme Court of New Mexico ruled that the local school board had authority to discharge the superintendent, pursuant to the State's School Personnel Act. It found that although the act provided for discharge of employees by a superintendent, who obviously could not discharge himself, the school board had implicit authority to dismiss its superintendent. *Stanley v. Raton Bd. of Educ.*, 876 P.2d 232 (N.M. 1994).

An Ohio school administrator challenged the nonrenewal of his contract contending the board did not conform to statutory evaluation and hearing requirements. The court ruled for the board since the administrator failed to state a claim for which relief could be granted. *State ex rel. Martinez v. Cleveland City Sch. Dist. Bd. of Educ.*, 639 N.E.2d 80 (Ohio 1994).

A Michigan superintendent successfully challenged his contract nonrenewal based on his unsatisfactory performance due to improper expenditure of school funds. The district employee handbook entitled the superintendent to a one-year program of assistance to improve his performance. *Thorin v. Bloomfield Hills Bd. of Educ.*, 513 N.W.2d 230 (Mich. Ct. App. 1994).

A former high school principal brought an action alleging wrongful termination and due process violations following repeated instances of insubordination. A Texas Court of Appeals held that the trial court should not have dismissed the action based on failure to exhaust administrative remedies. *Washington v. Fort Bend Indep. Sch. Dist.*, 892 S.W.2d 156 (Tex. Ct. App. 1994).

A South Carolina assistant principal appealed his nonrenewal. Prior to the dismissal of his appeal, the administrator brought a whistleblower action against the board. The board denied the allegations of retaliation of reporting wrongdoing by school personnel by the plaintiff. The court of appeals concluded that the public policy considerations, which form the basis for the application of the doctrine of *res judicata*, do not apply where the administrative tribunal must judge allegations of its own wrongdoing and its own retaliation in response to a report of that wrongdoing. *Wright v.*

Marlboro County Sch. Dist., 452 S.E.2d 12 (S.C. Ct. App. 1994).

An assistant principal challenged his demotion to a teaching position. The court held that a statute which permits the assignment of an assistant principal to a teaching position without benefit of notice or opportunity for a hearing did not affect his continued employment. The statute was not intended to apply to the position of assistant principal. *Bart v. Board of Educ. of Chicago*, 632 N.E.2d 39 (Ill. App. Ct. 1993).

A Chicago secondary principal was terminated from his position for failing to maintain adequate school activity financial records. The appellate court reversed in favor of the principal. The court reasoned that the conduct was not irremediable and he could not be removed prior to a written warning. *Board of Educ. of Chicago v. Van Kast*, 625 N.E.2d 206 (Ill. App. Ct. 1993).

The president of a parent-teacher association sought disclosure of the personnel records of an elementary principal. Performance evaluations implicating her right to privacy were not subject to disclosure under the state's public disclosure act. The court determined that disclosure was not warranted since the disclosure of the documents would be highly offensive in regard to the principal's right to privacy and in view of the public school system's need for an effective evaluation system. *Brown v. Seattle Pub. Sch.*, 860 P.2d 1059 (Wash. Ct. App. 1993).

A former Kentucky assistant principal was reassigned as a classroom teacher at a reduced salary. The court concluded he was not entitled to a hearing under the Kentucky Teacher Tenure Act because he had not completed the three years of service to attain administrative tenure. *Board of Educ. of Kenton County, Ky. v. Paul*, 846 S.W.2d 675 (Ky. 1993).

The appellate court reversed the lower court, the school board challenged the superintendent's counsel since he represented the school board during the superintendent's tenure. The Commissioner of Education, rather than the supreme court, had the authority to disqualify a superintendent's counsel in an administrative proceeding concerning the superintendent's suspension and possible termi-

nation. *Board of Educ. of the Wappingers Cent. Sch. Dist. v. Watkins*, 593 N.Y.S.2d 110 (N.Y. App. Div. 1993).

An Illinois elementary principal unsuccessfully challenged her demotion. The court held that the written notice explaining that she had not made sufficient progress in correcting performance concerns satisfied statutory requirements. Secondly, the principal was afforded an opportunity to discuss her demotion with the board. *Ehorn v. Board of Educ. of Robinson Community Unit Sch. Dist. No. 2*, 618 N.E.2d 1149 (Ill. App. Ct. 1993).

Subdistrict superintendents in Chicago successfully challenged their termination when the school district was reorganized pursuant to the State School Reform Act. The court reasoned that the language of the Reform Act had an intent to give them contractual rights if their positions were terminated. *Kaszubowski v. Board of Educ. of Chicago*, 618 N.E.2d 609 (Ill. App. Ct. 1993).

The vice president of a teachers' association sought to review the settlement agreement which disposed the disciplinary charges against a district principal. The court denied the request citing the employment records exception which is not meant to apply only to employment applications but rather to all materials that would be considered part of the employment records which would include the settlement document. *LaRocca v. Board of Educ. of Jericho Union Free Sch. Dist.*, 602 N.Y.S.2d 1009 (N.Y. Sup. Ct. 1993).

The court found the board acted improperly where the superintendent had not hired the most qualified applicant since he had already certified another person as most qualified before the opening was even posted. *Oxley v. Board of Educ. of County of Summers*, 438 S.E.2d 602 (W. Va. 1993).

Conviction of a school superintendent under Georgia RICO (Racketeer Act) was reversed where the superintendent's signing of the disclosure letter attesting to the accuracy of financial records did not make the superintendent an aider or abettor to diversion of funds to a slush fund by two assistant superintendents. Evidence was insufficient to sustain the conviction of two predicate acts of theft by the assistant superintendents. *Purvis v. State*, 433 S.E.2d 58 (Ga. Ct. App. 1993).

A teacher/principal was unsuccessful in an attempt to gain reinstatement to his position. The administrator discharged a firearm on school premises in violation of board policy. The fact that the teacher/principal broke up a fight and was attacked by four assailants prior to firing the gun to scare off the students did not impact the court's decision. The staff member did not have the requisite approval to carry the firearm on school property. *Burton v. Alabama State Tenure Comm'n*, 601 So. 2d 113 (Ala. Civ. App. 1992).

The *Des Moines Register* sought to compel the school district to produce settlement agreement documents between the district and a former elementary principal. The court held that only the settlement agreement was subject to disclosure. Documents from the investigation which include job performance information collected by various committees which reviewed the complaints were not subject to disclosure. *Des Moines Indep. Community Sch. Dist. Pub. Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666 (Iowa 1992).

A tenured assistant principal was wrongfully terminated from his principal's teaching contract. The administrator had been terminated for allegedly sexually abusing female students which he had not committed. The court ruled the principal should have been allowed to proceed on a claim of emotional damage. *Douglas v. Cincinnati Bd. of Educ.*, 608 N.E.2d 1128 (Ohio Ct. App. 1992).

An assistant principal was suspended with pay because of allegations that he improperly used school district funds for cash advances in the amount \$31,500. The court ruled that the district could recoup the cash advances against his salary while he was on suspension. *Duffy v. Pougkeepsie City Sch. Dist.*, 583 N.Y.S.2d 658 (App. Div. 1992).

A Texas elementary principal appealed his demotion to a classroom teacher and was granted two evidentiary hearings concerning the allegation of sexual harassment and the mismanagement of funds. The court precluded the board from holding "in abeyance" a decision as to whether the appeal to the board was timely. The commissioner was charged with holding a hearing on the substantive merits of the appeal. *Hernandez v. Meno*, 828 S.W.2d 491 (Tex. Ct. App. 1992).

A retired elementary principal appealed the decision of the Pennsylvania retirement board concerning the final salary calculation. The \$16,000 salary increase in the principal's final year of service was a severance payment which could be disallowed for retirement benefit purposes. *Laurito v. Public Sch. Employees' Retirement Bd.*, 606 A.2d 609 (Pa. Commw. Ct. 1992).

A superintendent was employed for two years by the board of education, who thought the administrator was properly certificated in that state at the time he signed his contract. The board terminated the second year of the contract when learning the superintendent obtained only a one-year license. The court ruled that the board's action was not arbitrary or capricious. *Maasjo v. McLaughlin Sch. Dist. No. 15-2*, 489 N.W.2d 618 (S.D. 1992).

A superintendent, discharged for refusing to answer school board questions, was entitled to unemployment compensation benefits because the board did not have substantial evidence to prove intentional commission of acts detrimental to the board. The board failed to furnish sufficient evidence of misconduct. *West v. Employment Appeal Bd., Dep't of Inspections and Appeals*, 489 N.W.2d 731 (Iowa 1992).

A school district assistant superintendent for curriculum and instruction was not entitled to statutory procedural accorded to teachers after his position had been terminated. The trial court determined that the assistant superintendent was entitled only to the same nonrenewal protections as for a superintendent. *Boschee v. Mandan Pub. Sch. Dist.*, 478 N.W.2d 276 (N.D. 1991).

A former assistant principal was justifiably demoted to classroom teacher on the grounds of willful negligence when he was repeatedly tardy to work and left campus on at least five occasions during the school day without permission. *Hargis v. LaFourche Parish Sch. Bd.*, 593 So. 2d 400 (La. Ct. App. 1991).

The dismissal of a superintendent was upheld for inadequately handling the school district's budgetary and fiscal affairs which resulted in a \$500,000 deficit. The court stated, however, the school board could not rely on a belief that the superintendent's discharge was needed to restore the community's confidence to pass a needed tax

referendum. *Board of Educ. of Smyrna Sch. Dist. v. DiNunzio*, 602 A.2d 85 (Del. Super. Ct. 1990).

Reduction in Force and Involuntary Leaves of Absence

An assistant superintendent position for educational services position was eliminated for budgetary reasons. The plaintiff charged that she was bypassed for two administrative positions for which she maintained she was qualified. The court questioned whether the newly created assistant superintendent position was similar to the abolished position, therefore, denied her claim for a pre-hearing. *Fairbain v. Board of Educ. of South County Cent. Sch. Dist.*, 876 F. Supp. 432 (E.D.N.Y. 1995).

An assistant principal petitioned for a writ of mandamus since the school board denied a request for a hearing prior to a reassignment. The supreme court affirmed the finding that the administrator failed to establish she suffered a reduction in pay which is required to show she had been demoted. *Hamilton v. Telfair County Sch. Dist.*, 455 S.E.2d 23 (Ga. 1995).

The board of education eliminated the position of support services and security which had the responsibility for supervising and coordinating services of noncertified staff. The reduction of force due to a cancellation of programs for budgetary reasons conformed to the Fair Dismissal Act under Georgia statutes. *Curry v. Dawson County Bd. of Educ.*, 442 S.E.2d 919 (Ga. Ct. App. 1994).

A former middle school principal challenged her one-year contract renewal instead of two and her transfer to another administrative assignment. The administrator failed to demonstrate that the reason for the one-year contract and transfer was attributed to criticism of the district superintendent and the filing of a grievance. Texas statute insured a property interest in a contract renewal, but not for a two-year period. *George v. Bougeois*, 852 F. Supp. 1341 (E.D. Tex. 1994).

A Pennsylvania assistant principal/buildings and grounds supervisor challenged his demotion to a teaching position when the board eliminated the position for reasons of economy and efficiency. The court reasoned that the administrator was not

entitled to bump a full-time assistant principal with less experience since the buildings and grounds supervisor spent only part of his duties as assistant principal. *Hritz v. Laurel Highlands Sch. Dist.*, 648 A.2d 108 (Pa. Commw. Ct. 1994).

An Ohio administrator unsuccessfully challenged her contract nonrenewal since she was not re-employed because of the elimination of her position. The board decision was upheld even though the administrator's job performance was not evaluated in compliance with state statutes. *State ex rel. Cassels v. Dayton City Sch. Dist. Bd. of Educ.*, 631 N.E.2d 150 (Ohio 1994).

An Ohio school district sought further review after an administrator whose contract was not renewed sought a writ of mandamus. The supreme court ruled where an employee's status as an administrator was established by statute, by providing him an automatic contract renewal, he is entitled to re-employment, even if he was terminated due to a reduction in force caused by declining enrollment. *State ex rel. Donaldson v. Athens City Sch. Dist. Bd. of Educ.*, 624 N.E.2d 709 (Ohio 1994).

A West Virginia Board of Education eliminated principal and assistant principal positions due to decline in enrollment and loss of revenue. The supreme court affirmed the lower court's interpretation of the West Virginia Code that required a board to make all cuts in central office if the number permits. *Summers County Bd. of Educ. v. Allen*, 450 S.E.2d 658 (W. Va. 1994).

The demotion of a high school administrator based upon the district "principal transfer protocol" policy was formed not arbitrary and discriminatory and did not violate the school code. The purpose of the policy was to match principals with schools in which they could best use their individual talents and professional strengths. *Harris v. School Dist. of Phila.*, 624 A.2d 784 (Pa. Commw. Ct. 1993).

A principal was demoted to a teaching position because of several acts of alleged misconduct. The California Court of Appeals held that the Education Code statutory provisions were satisfied since the notice required did not apply to involuntary transfer, and a competency hearing was not required since the administrator was transferred on the basis of

willful misconduct. *Jefferson v. Compton Unified Sch. Dist.*, 17 Cal. Rptr. 2d 474 (Cal. Ct. App. 1993).

The demotion of a vice principal to a teacher due to economic reasons was not ruled arbitrary, discriminatory, or founded upon improper considerations. The plaintiff was one of seven administrators who lost their positions at the same time. *Kaczmarcik v. Carbondale Area Sch. Dist.*, 625 A.2d 126 (Pa. Commw. Ct. 1993).

A New Jersey tenured assistant superintendent claim was rejected that challenged the demotion due to a reduction in force. The court upheld the ninety-day limitation on employee appeals because of a RIF. However, his tenure protection extended to other assistant superintendent positions for which he was certificated. A New Jersey court has upheld a ninety-day limitation appeals by school employees who have been RIFFed. However, even though the assistant superintendent who lost his appeal was precluded from challenging the RIF for his former position, his tenure protection extended to any assistant superintendent assignment within the scope of his certificate. *Kaprow v. Board of Educ. of Berkley Township*, 622 A.2d 237 (N.J. App. Div. 1993).

The Minnesota statutes permit a school board to reduce a full-time principal to half-time, but could not reassign the superintendent to a half-time superintendent and half-time principal position because of less seniority than the principal. *Klein v. Board of Educ. of Indep. Sch. Dist. No. 671, Hills-Beaver Creek*, 497 N.W.2d 620 (Minn. Ct. App. 1993).

A school district's policy of following seniority in the reduction in force of teachers excluded administrators. The district court held that this rule did not violate an assistant principal's right to equal protections. *Murphy v. Western Line Sch. Dist.*, 832 F. Supp. 178 (N.D. Miss. 1993).

A Connecticut local school board wrongfully terminated a vice principal in the absence of a collective bargaining agreement or written policy of the board regarding the termination of teachers. In violating the state statute the court ordered a reinstatement of position and a determination of back pay. *Theriault v. Board of Educ. of Bloomfield*, 626 A.2d 781 (Conn. Ct. App. 1993).

A media specialist who was also certified as an administrator did not have a right to bump an administrator of lesser seniority under Connecticut's Teacher Tenure Act. *Trotta v. Board of Educ. of Plymouth*, 628 A.2d 1343 (Conn. Ct. App. 1993).

A local school board violated a West Virginia statute by demoting an elementary principal to a classroom teacher due to a loss of funding and reorganization. The supreme court held, according to statute, that central office administrators must be eliminated first in any reduction in force. *Board of Educ. of County of Grant v. Townsend*, 418 S.E.2d 359 (W. Va. 1992).

Contract Disputes

A superintendent maintained that through negotiations with the school board an oral contract extended his contract. The Supreme Court of Iowa disagreed and held that statutory provisions require the superintendent's contract be in writing. *Bradley v. West Sioux Community Sch. Bd. of Educ.*, 510 N.W.2d 881 (Iowa 1994).

The trial court's decision was upheld that the board of education was not indebted to a former superintendent for any accrued but unused sick leave and vacation days even though the amended compensation settlement contract was ambiguous. *Sang v. Jefferson County Bd. of Educ.*, 652 So. 2d 310 (Ala. Civ. App. 1994).

An assistant principal in Alabama unsuccessfully challenged his transfer to a similar position in another middle school by filing a writ of mandamus. The court ruled the school administrator's appeal was barred due to his failure to file an appeal within the statutory fifteen-day provision. *Alabama State Tenure Comm'n v. Goldsby*, 627 So. 2d 434 (Ala. Civ. App. 1993).

The school board petitioned to ascertain whether the provisions of the superintendent's contract was ambiguous as to whether he was entitled to compensation on unused vacation time when his contract expired. The Colorado Supreme Court ruled that the language was ambiguous and thus ruled in favor of the administrator. *Cheyenne Mountain Sch. Dist. No. 12 v. Thompson*, 861 P.2d 711 (Colo. 1993).

A school superintendent negotiated a contract with the school board which contained a provision that the board could unilaterally terminate him if the balance of his contract was paid. When the superintendent acquiesced the court ruled he had no claim under section 1983. *Mitchell v. Skinner*, 796 F. Supp. 1464 (N.D. Ala. 1992).

An elementary principal who had one year remaining on her contract, and who was assigned to a classroom for that last year at a rate of pay prior to the issuance of the principal contract, stated a breach of contract action against the school district. Not only did plaintiff have a valid contract, but she had not been provided the thirty-day notice not to renew her contract as required by state statute. The board failed to give the principal the statutorily required thirty-day notice of its intent not to renew her contract. *Murray v. Monror-Gregg Sch. Dist.*, 585 N.E.2d 687 (Ind. Ct. App. 1992).

Tenure

Two building administrators brought suit against the board of education alleging wrongful termination after being notified that their positions were declared vacant. The court ruled in favor of the board since school administrators have no tenure rights as administrators and statutory obligations were satisfied. *Naranjo v. Board of Educ. of Espanola Pub. Sch.*, 891 P.2d 542 (N.M. 1995).

A New Jersey elementary principal failed to appeal her nonrenewal within the ninety-day period after receiving notice of the board's decision which resulted in a finding that she had not achieved tenure. *Nissman v. Board of Educ. of Long Beach Island, Ocean County*, 640 A.2d. 293 (N.J. Super. Ct. App. Div. 1994).

The Supreme Court of New Mexico held that a school district's public school manual, entitling employees an opportunity to correct deficiencies prior to contract termination, did not apply to the superintendent. It reasoned that since the manual conflicted with the School Personnel Act which provides nontenured employees such as superintendents no expectation of continued employment. The manual's procedures were inapplicable to the administrators. *Swinney v. Deming Bd. of Educ.*, 873 P.2d 238 (N.M. 1994).

Improper interpretation of a statute resulted in a high school principal successfully challenging a termination of employment. The court reasoned the superintendent could have terminated employment prior to the end of the probationary period. However, the completion of three years of continuous service resulted in tenure. *Bufkin v. Milwaukee Bd. of Sch. Directors*, 507 N.W.2d 571 (Wis. Ct. App. 1993).

An elementary principal was unsuccessful in challenging the nonrenewal of his contract. The principal alleged the board acted arbitrarily by failing to follow school board policy and not properly evaluating the principal as he could respond to the evaluation. The court held that "regulations calling for periodic reviews did not create a right of action for failure to provide such review." *Clinton v. Wake County Bd. of Educ.*, 424 S.E.2d 691 (N.C. Ct. App. 1993).

The Alabama Supreme Court held that a person serving as a school superintendent cannot acquire tenure because a superintendent is not a "supervisor" within the meaning of the state tenure law. He was never tenured as a teacher and sought tenure as a supervisor. *Dansby v. Dale County Bd. of Educ.*, 623 So. 2d 1122 (Ala. 1993).

A former administrator who had served as a principal and only six months as a teacher, was not considered a "permanent teacher" under Missouri Teacher Tenure Act, but rather, his status for purposes of termination of employment was governed by statute applicable to certified teachers ineligible for permanent status under the act. The principal's

claim for failure to evaluate would be deemed abandoned. *Inman v. Reorganized Sch. Dist. No. 11 of Hayti*, 845 S.W.2d 688 (Mo. Ct. App. 1993).

A New York probationary administrator challenged the board of education contending they did not comply with statutory procedures when it voted to deny her tenure. The supreme court held that statutory protections afforded probationary teachers did not apply to administrators. *Robinson v. Bruni*, 598 N.Y.S.2d 625 (N.Y. App. Div. 1993).

In Minnesota, an associate superintendent for curriculum and instruction is not a teacher under the State Teacher Tenure Act. Therefore, the associate superintendent whose position had been abolished in an administrative reorganization had no bumping rights. *Fyre v. Independent Sch. Dist. No. 625*, 494 N.W.2d 466 (Minn. 1992).

A city school superintendent does not have a protected property interest in continued employment. The Alabama Legislature did not intend to include school superintendents within the general definition of "supervisor" for the purpose of tenure. *Mitchell v. Skinner*, 603 So. 2d 1023 (Ala. 1992).

A federal district court determined that under state statute a person tenured as a principal in one county could not transfer that tenure to another county. As a result, the principal had no protectable property interest in her status as principal after pursuing employment in a different county. *Lee-Warren v. School Bd. of Cumberland County*, 792 F. Supp. 472 (W.D. Va. 1991).

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Discrimination Against School Administrators

Prepared by Susan G. Clark, Lecturer at Cleveland State
Research Assistant, Kent State University

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Race Discrimination

A principal, who was suspended without pay after admitting to theft of student activity funds, claimed the board's action was discriminatory, as nonblack employees who committed equal offenses were not suspended. The court granted the school district's motion for summary judgment after finding that the plaintiff did not establish the board's actions to be a pretext for race discrimination. *Noland v. Lorain Bd. of Educ.*, 869 F. Supp. 529 (N.D. Ohio 1994).

The court denied a motion for summary judgment requested by the superintendent, assistant superintendent, and principal where a director of district Chapter 1 programs established a prima facie case of race discrimination. The court found evidence of disparate treatment and retaliation when the plaintiff was harassed, demoted, and was replaced and treated differently than a similarly situated member of an unprotected class. *Clemons v. Hardee County Sch. Bd.*, 848 F. Supp. 1535 (M.D. Fla. 1994).

Judgment was granted to the employer where the divisional assistant of desegregation monitoring claimed she was not promoted in retaliation for complaining of discriminatory practices. The court held that though board policy stated that promotions would be based on the length and character of service of its employees, no mechanical application of the policy was required under title VII because employers were entitled to make business decisions for "good reason, bad reason, or no reason at all." *Whitfield v. St. Louis Bd. of Educ.*, 863 F. Supp. 1008 (E.D. Mo. 1994).

An elementary school principal whose contract was nonrenewed claimed discrimination on the basis of race and political affiliation. The court denied motions for reconsideration. The plaintiff had twice been suspended without pay. No right to continued employment was found as the most recent title VI desegregation plan supplanted an earlier agreement, breach of contract claims were unsubstantiated, and the plaintiff's section 1981 and section 1983 claims were time-barred. *Asllani v. Board of Educ. of Chicago*, 845 F. Supp. 1209 (N.D. Ill. 1993).

A principal brought reverse discrimination charges against the school district under section

1981, title VII, the Age Discrimination in Employment Act, and the Fourteenth Amendment when his contract was allegedly nonrenewed on the basis of race. The principal asserted that his rights were guaranteed under an implementation plan entered into by the school board in order to avoid litigation. The plan prohibited the assignment of principals on the basis of race. The court found that a subsequent desegregation plan developed as part of a consent decree entered in a title VI action brought by the United States superseded the implementation plan. The plaintiff's motion for summary judgment was denied. *Keenan v. Board of Educ. of Chicago*, 812 F. Supp. 780 (N.D. Ill. 1992).

A middle school principal who was denied promotions and was reassigned did not prevail in his title VII claims of retaliation. However, the court found that the school board's determination that another candidate for director of elementary instruction was better qualified for the position was a pretext for discrimination on the basis of race, and relief was granted under section 1983. *Senigaur v. Beaumont Indep. Sch. Dist.*, 760 F. Supp. 1200 (E.D. Tex. 1991).

A principal was reassigned allegedly in retaliation for filing a complaint with the EEOC claiming discrimination on the basis of race. The court held that the charge was not actionable under section 1981 as statutory relief was available, nor could a section 1985 claim stand, since the plaintiff did not show conspiracy or discriminatory animus underlying the adverse actions. *Senigaur v. Beaumont Indep. Sch. Dist.*, 739 F. Supp. 1098 (E.D. Tex. 1990).

A principal who was reassigned to a classroom position claimed she was discriminated against on the basis of race and age; filing suit under title VII, ADEA, sections 1981 and 1983. The court dismissed claims for relief under the Due Process Clause of the Fourteenth Amendment, finding the reliance on the Amendment in error as the plaintiff did not have a liberty or property interest in her position; the section 1981 claim did not stand as the alleged discrimination took place during the term of the contract, not the entering into the contract. The court granted leave to file an amended claim under section 1983 to state a cause of action. *Nelson v. School Bd. of Palm Beach County, Fla.*, 738 F. Supp. 478 (S.D. Fla. 1990).

An African-American plaintiff had been in the position of interim acting assistant principal for four years before she became licensed. Shortly after her official appointment as the interim assistant principal, the board began a search for a permanent replacement. Though she was interviewed, she was not hired and filed suit under title VII, sections 1981, 1983 and the Fourteenth Amendment. The board successfully refuted the plaintiff's claims of race discrimination by showing that, though both candidates possessed equal qualifications, the preferred candidate had more successful interviews and summary judgment was granted. *Morton v. City Sch. Dist. of N.Y.*, 742 F. Supp. 145 (S.D.N.Y. 1990).

After a successful claim of race discrimination in which the plaintiff was appointed vice principal, the board elected to reorganize the administrative structure and eliminate vice principalships. Shortly after the restructuring, the plaintiff was passed over for an assistant superintendent position. The plaintiff filed with the state office of civil rights and the ALJ held that under the state Law Against Discrimination, the action was in retaliation for her prior pursuit of employment discrimination claims. On judicial review of that decision, the court held that by not showing that other candidates were more qualified for the position, the district did not rebut the presumption that the action was retaliatory. *Jamison v. Rockaway Township Bd. of Educ.*, 577 A.2d 177 (N.J. Super. Ct. App. Div. 1990).

The school board appealed the award of back pay granted to a principal who proved he was discriminated against on the basis of race when he was moved to the position of instructional leader, denied equal pay, and promotional considerations. Notwithstanding that the complaint was filed in 1974 and the case was not heard until 1988, the court held that discrimination was evident and relief was available under the doctrine of laches. *Pittsburgh Bd. of Educ. v. Commonwealth, Pa. Human Relations Comm'n.*, 563 A.2d 581 (Pa. Commw. Ct. 1989).

Pursuant to a desegregation order, a black principal who was demoted to co-principal with a white principal when two high schools were consolidated. However, he was generally viewed by staff as the assistant principal. After being passed over for promotion to the principalship three times, the black principal filed suit under title VII. The court

found that the district had not achieved unitary status, and that the plaintiff's rights under *Singleton* (419 F.2d 1211 (1969)) were violated. The court ordered back pay computed from the time of his demotion, entitlement to the first principalship vacancy, and fair market value of a rental home occupied by the principal from the time of the demotion. *United States v. Mississippi*, 725 F. Supp. 307 (N.D. Miss. 1989).

A high school principal who was denied tenure after a three-year probationary period brought suit under title VII. The court granted judgment for the school district and found the plaintiff did not establish a prima facie case of race discrimination as no circumstances were presented allowing the court to infer pretext or discriminatory intent. Furthermore, no procedural errors existed. The school district's proffered reasons for the denial included various complaints lodged by parents and teachers, and evaluations that did not show evidence of leadership or improved and quantifiable student achievement. *Louis v. Board of Educ. of N.Y.*, 705 F. Supp. 751 (E.D.N.Y. 1989).

An assistant principal who claimed race discrimination motivated his discharge was found, on appeal, to have been denied due process, as he was not afforded a pretermination hearing. On remand, the district court awarded one dollar in damages and the principal appealed. The appeals court held that nominal damages were properly awarded, as was the district court's action in reducing the plaintiff's attorney's compensable hours. The court stated that the plaintiff suffered no harm, since, if given a pretermination hearing, he would have been fired anyway. *Rogers v. Kelly*, 866 F.2d 997 (8th Cir. 1989).

The court dismissed this title VII race discrimination case where the plaintiff, a middle school principal who had been demoted, failed to rebut the district's nondiscriminatory reasons for not appointing him to vacant elementary school principalships. Though he met the minimum qualifications for the job, the district cited the plaintiff's removal from his administrative position and reassignment to classroom duties for various errors in judgment, poor performance, and mismanagement as legitimate reasons. *Brown v. Springfield City Sch. Bd. of Educ.*, 689 F. Supp. 783 (S.D. Ohio 1988).

The plaintiff, who successfully brought suit under title VII to retain his position as principal, later combatted dismissal actions against him (though not under title VII), and again retained his position as principal. His request for attorney fees for work completed after the court's decision in the title VII suit was denied and appeal was brought forth. The district court decision was affirmed as the appeals court stated that the plaintiff was not entitled to attorney fees for state competency proceedings which were not interwoven with title VII employment discrimination protections. *Cooper v. Williamson County Bd. of Educ.*, 820 F.2d 180 (6th Cir. 1987).

The district court held that the demotion of a principal, who alleged race discrimination, was based on substandard performance, poor judgment, violation of school policy, and the principal appealed. The appeals court affirmed, finding no race discrimination, and that a settlement agreement entered into by the former principal, the school board's attorney, and the superintendent which would have reinstated the principal was a question for state law, as the school board could only authorize such an agreement. *Morgan v. South Bend Community Sch. Corp.*, 797 F.2d 471 (7th Cir. 1986).

A principal of a correctional school was demoted to assistant principal and claimed discrimination on the basis of race under title VII. His disparate treatment claim failed and summary judgment was granted to the employer as well as attorney fees. The plaintiff did not establish a causal link between his race and the merger of two schools which resulted in the elimination of his job. *Gilyard v. South Carolina Dep't of Youth Servs.*, 667 F. Supp. 266 (D.S.C. 1985).

In this case with a long history, a former high school principal who was demoted as a result of a voluntary desegregation action, claimed race discrimination and violation of his *Singleton* rights when he was not promoted. The appeals court reversed the judgment of the district court which awarded back pay and injunctive relief. The court held that no violation of *Singleton* rights existed because when a principalship position came open, the principal did not have the necessary advanced degree that he so claimed. Furthermore, once he acquired the degree, *Singleton* protections could

not apply as the demotion was not part of a court-ordered desegregation. *Cousin v. Board of Trustees of Houston Mun. Separate Sch. Dist.*, 746 F.2d 262 (5th Cir. 1984).

An assistant superintendent of administration at the state School for the Visually Impaired alleged race discrimination in employment and housing benefits. The plaintiff claimed he was entitled to the superintendent position after the state schools for the blind were consolidated in a desegregation order, where a white male was appointed; that he should have been appointed the interim superintendent when the superintendent resigned; that he should have been appointed the new superintendent, instead the white male interim was appointed; and that his housing benefits were improperly terminated. The court held that the school board was liable for employment discrimination in the appointment of the interim superintendent, and damages were awarded to the assistant superintendent from the date housing benefits ceased to whenever the board complied with a settlement agreement reached pursuant to the assistant superintendent's claims filed with EEOC. *Kiper v. Louisiana State Bd. of Elementary & Secondary Educ.*, 592 F. Supp. 1343 (M.D. La. 1984).

An assistant high school principal claimed discrimination on the basis of race when she was not promoted where district policy stated a preference for hiring candidates from within the district and after an outside white male candidate was selected. The appeals court reversed the district court's finding of disparate treatment under title VII finding no intent to discriminate where the district proffered it had hired the candidate with superior qualifications. The court remanded the case with instructions to determine whether the district's decision to hire the most qualified person for the job was the legitimate reason for hiring, and if not, whether race was a factor in the decision not to hire the plaintiff. *Clark v. Huntsville City Bd. of Educ.*, 717 F.2d 525 (11th Cir. 1983).

A principal, whose building was destroyed by fire, failed to secure another principalship in the district and filed suit under section 1981 and title VII for race discrimination. On appeal from summary judgment granted to the school board, the court held that the title VII claims were time-barred for failure to file with EEOC and equitable tolling

was foreclosed, thus affirming the district court decision. However, the court, in part, reversed the district court, holding that section 1981 claims for declaratory and injunctive relief had a twenty-year statute of limitations. The court also vacated the entry of summary judgment with respect to the plaintiff's claims for damages under section 1981. *Stafford v. Muscogee County Bd. of Educ.*, 688 F.2d 1383 (11th Cir. 1982).

A black principal who had successfully proved his case of race discrimination when he challenged the appointment of a white male to the superintendency, filed for attorney fees as the prevailing party under section 1988. The court granted the award. *Langdon v. Drew Mun. Separate Sch. Dist.*, 512 F. Supp. 1131 (N.D. Miss. 1981).

The appeals court found evidence that the school board unlawfully discriminated against two interim acting principals on the basis of race when they were removed from their positions; the court reversed the decision of the lower court. The appeals court stated that notwithstanding the fact that the interim principals had no vested rights in their positions, the showing that black or Hispanic principals were systematically replaced by white principals demonstrated a pattern and practice of discrimination. *New York City Bd. of Educ., Community Sch. Dist. No. 1 v. Batista*, 430 N.E.2d 877 (N.Y. Ct. App. 1981).

The appeals court affirmed the district court's finding of no race discrimination in this title VII action brought by a public school principal. The principal attempted to have the charge certified as a class action, however, the district court consolidated the claim with a pending desegregation action which encompassed employment discrimination. The superintendent successfully defended the district's actions by showing that principals' salaries were based on individual workload considerations. *Allen v. Grenada Mun. Separate Sch. Dist.*, 575 F.2d 486 (5th Cir. 1978).

When his position of vice principal at a correctional school for boys was eliminated, the plaintiff brought suit under title VII claiming race discrimination. He further alleged that his inability to secure another position resulted from a conspiracy. The court held that the plaintiff failed to meet the burden of proof where the defendants asserted that

portions of the school were closed and reductions-in-force taken due to administrative changes; and that the plaintiff neither applied for, nor was qualified for, any other positions. The court held in favor of the defendants, with costs. *Robertson v. Maryland State Dep't of Personnel*, 481 F. Supp. 108 (D. Md. 1978).

An elementary school comprised of black children was phased out as part of a desegregation order and the principal, who was black, transferred to the position of assistant high school principal. The court affirmed that the decision to reassign the principal was not based on any objective criteria and constituted a discriminatory demotion under section 1981. The principal, who was the most senior administrator in the county, made less money as an assistant principal, had to drive farther, and had significantly less responsibility and prestige. The court upheld the award of attorney fees, awarded compensatory seniority, and remanded for consideration of back pay. *Campbell v. Gadsden County Dist. Sch. Bd.*, 534 F.2d 650 (5th Cir. 1976).

Discrimination on the Basis of Religion

The plaintiff, an assistant superintendent, appealed when the district court found for the school board and invited the defendants to petition for attorney fees in this section 1983 and title VII case alleging discrimination on the basis of religion and sex. The plaintiff claimed that her discharge resulted from strong anti-Semitic beliefs. The court reversed the district court's finding that the suit was frivolous, thus barring the prevailing defendants attorney fees under section 1983, and affirmed in favor of the school board, finding poor performance the reason for her dismissal, not discrimination. *Sullivan v. School Bd. of Pinellas County*, 773 F.2d 1182 (11th Cir. 1985).

Age Discrimination

When an accountant with an administrative contract left the school district, a sixty-one-year-old bookkeeper was hired to temporarily assume the position; she was eventually given permanent status. She sued the school district for age and sex discrimination after the district moved to reclassify

the position as clerical and not administrative. The court held in favor of the school district when it adjusted the salary of the bookkeeper resulting in a twenty-five percent salary reduction. *Hamm v. Central Bucks Sch. Dist.*, 1994 U.S. Dist. LEXIS 16304 (E.D. Pa. Nov. 15, 1994).

An age discrimination suit was filed in state court by the former director of finance for the school district nine years after she voluntarily left employment. The administrative law judge (ALJ) found the former director was entitled to early retirement severance pay of \$106,000 and ordered summary judgment against the school district. The court of appeals reversed the decision of the ALJ where it found that the director was discriminated against on the basis of age concerning her eligibility for severance benefits. The district's voluntary early retirement incentive program with a minimum eligibility of age forty-five, with ten years experience, which had been negotiated with employee unions, was held to be authorized by statute permitting the district to adopt rules to pay severance to its employees, and was not discriminatory under state human rights law toward employees under the age of forty-five. *State by Beaulieu v. Independent Sch. Dist. No. 624*, 509 N.W.2d 572 (Minn. Ct. App. 1993).

The nonrenewal of the superintendent's contract prompted this action claiming age discrimination and violation of due process. The district court held that the former superintendent failed to state a cause of action for the due process claim as the term of the contract had expired; and he failed to demonstrate that the board's repeated concerns over the lack of long-range planning as reflected in the superintendent's evaluations, was merely a pretext for age discrimination. *Murray v. Mount Pleasant Indep. Sch. Dist.*, 754 F. Supp. 535 (E.D. Tex. 1990), *aff'd*, 928 F.2d 402 (5th Cir. 1991).

When a principal's contract was nonrenewed, she was reassigned to a classroom teaching position. The court held that she stated legitimate claims for age, sex, and race discrimination, as well as causes of action under sections 1981 and 1983 equal protection where she was doing "exemplary" work prior to the demotion, and would have received less pay and prestige in the classroom position. *Nelson v. School Bd. of Palm Beach County, Fla.*, 738 F. Supp. 478 (S.D. Fla. 1990).

Where the female director of an adult basic education program had been denied promotions in favor of white males, she claimed age and sex discrimination. The director appealed the court's judgment in favor of the school board on the sex discrimination claim, remittitur of less than half the jury award, and denial of front pay and reinstatement on the age discrimination claim. The appeals court reversed and remanded for further proceedings. The court found that neither of the male candidates who were selected for the contested positions held the minimum qualifications for the jobs. *Farber v. Massillon Bd. of Educ.*, 908 F.2d 65 (6th Cir. 1990).

The appeals court affirmed the district court grant of summary judgment to the school district where it transferred an over sixty-five-year-old principal to a dual principalship with a two-year contract and merit pay increase much farther from her home. The longer drive did not constitute a materially adverse change in the terms or conditions of her employment, nor did it constitute a demotion. *Spring v. Sheboygan Area Sch. Dist.*, 865 F.2d 883 (7th Cir. 1989).

After two principals notified the school board of their impending retirement, they were reclassified and demoted to classroom positions due to financial problems in the district. Though the economic decision to reduce the number of administrators was permissible, the court found the decision to reclassify these particular principals was linked to age and was discriminatory under ADEA provisions, but not willful. The plaintiffs did not mitigate their damages when they refused to take the teaching positions. The court ordered damages as the difference between the teaching salary and the administrator salary, plus pension contributions. *EEOC v. Community Unit Sch. Dist. No. 9, Madison County, Ill.*, 642 F. Supp. 902 (S.D. Ill. 1986).

An assistant principal successfully enjoined the school district from enforcing its mandatory retirement age policy by claiming it violated his constitutional rights. The court granted an injunction, stating that mandatory retirement at age sixty-five did not rationally further the district's interest in providing the "best education at the most affordable cost." The facts of this case took place just six months before the effective date of the Age Dis-

crimination in Employment Act. *Kuhar v. Greensburg-Salem Sch. Dist.*, 466 F. Supp. 806 (W.D. Pa. 1979).

Sex Discrimination

A tenured assistant superintendent had her position eliminated allegedly due to budget constraints and she was denied an assistant principalship. Two months later, when an assistant to the superintendent position was opened and filled, the plaintiff brought suit claiming race and sex discrimination under title VII and section 1983. The plaintiff claimed that the assistant to the superintendent position was created concurrently with the elimination of her position and that the position was filled de facto by another staff member. The court denied summary judgment to both parties and found that the case could go to a jury trial as the former assistant superintendent had established a prima facie case and demonstrated likelihood that the school board was liable for discrimination. *Fairbairn v. Board of Educ., S. Country Cent. Sch. Dist.*, 1995 U.S. Dist. LEXIS 324 (E.D.N.Y. Jan. 11, 1995).

A middle school program specialist claimed sex discrimination where she was not promoted to the principal of an alternative school. Though the favored candidate had more experience with disciplinary problems (he was the high school assistant principal), he was selected because he was a black male, as the majority of students at the school were black males, and he would have been a positive role model. The court found that the plaintiff would likely prevail in a title VII suit, since sex was a motivating factor in the board's rejection of the plaintiff, and the candidates' qualifications were equal. The plaintiff successfully sought an injunction to prohibit the school board from filling any secondary or alternative school administrative positions for which she was qualified without court permission. *Hicks v. Dothan City Bd. of Educ.*, 814 F. Supp. 1044 (M.D. Ala. 1993).

The district food services director claimed she was discriminated against on the basis of sex and brought suit when she was denied promotion to vocational education director. A jury heard the section 1983 claims and the court heard the title VII claims. The jury decided that the plaintiff's sex did not motivate the decision to not promote the

director and that the district would have come to the same conclusion if she were a male. The title VII claims were dismissed with prejudice as the plaintiff failed to establish a prima facie case because she did not present evidence indicating she was qualified for the position, nor could she demonstrate that the board's reason for hiring the most qualified individual, who happened to be male, for the vocational education director was pretextual. The court denied alternatives for a new trial. *Peden v. Suwannee County Sch. Bd.*, 837 F. Supp. 1188 (M.D. Fla. 1993).

A principal of a Catholic school, who rebuffed the parish priest's sexual overtures, was subsequently discharged in 1984 and claimed her inability to gain other employment was because she was blacklisted within the diocese. She filed under title VII, and later sought to amend her original claim to include the right to a jury trial and compensatory damages; however, the court held that the 1991 Amendments to the Civil Rights Act of 1964 could not be applied retroactively. *Nigrelli v. Catholic Bishop of Chicago*, 794 F. Supp. 246 (N.D. Ill. 1992).

The director of curriculum, instruction, staff development and special services claimed sex discrimination under section 1983, sexual harassment under title VII, and due process violations. The director had engaged in a four-year intimate relationship with the high school principal. Two years after the consensual relationship ended, the superintendent unsuccessfully requested her resignation due to antagonism with her former paramour and another high school principal. Subsequently, her position was eliminated and the plaintiff was reassigned to the classroom. The court found the plaintiff had no property right to an administrative position, granted summary judgment to the defendants and denied Rule 11 sanctions, finding that failed sexual relationships are often accompanied by jealousy, rejection, and hurt. The court further noted that the plaintiff choose to bring her private life into the work place, which left her open to retaliation, not because she was a woman, but because she was a former lover. *Keppler v. Hinsdale Township High Sch. Dist.* 86, 715 F. Supp. 862 (N.D. Ill. 1989).

A class of predominantly male elementary principals claimed wage differentials between them

and high school principals violated title VII. The court found they did not establish a prima facie case of wage discrimination on the basis of sex because male and female elementary principals received the same pay, as did male and female high school principals. The motion for summary judgment was granted to the board when it successfully showed that pay differences were based on factors other than sex (i.e., greater responsibilities at the high school, more staff, larger budget, and the difficulties in supervising adolescents). *Siegel v. Board of Educ. of City Sch. Dist. of N.Y.*, 713 F. Supp. 54 (E.D.N.Y. 1989).

The plaintiff brought suit under title VII when she was not promoted to the assistant director of transportation, a position she had formerly held, that had been eliminated when she occupied the position, and was later reinstated. The district offered legitimate reasons for not reinstating her to the position, including her inability to get along with others and her difficulty in supervising staff. The court granted judgment in favor of the school district employer. *Mira v. Monroe County Sch. Bd.*, 687 F. Supp. 1538 (S.D. Fla. 1988).

A principal who was denied promotion to assistant superintendent of instruction, and later, director of curriculum and staff development, claimed she was first discriminated on the basis of sex, and then, in retaliation for filing a charge based on the sex discrimination claim. She brought suit under title VII, section 1983 and the First and Fourteenth Amendments. The principal failed to show that an affirmative action plan in effect was violated by her nonpromotion, since the plan afforded a minority preference only in the case of a tie; nor did she show that her occupational liberty suffered, as there was no blacklisting; nor could she show retaliation. The district court judgment in favor of the school district was affirmed. *Yatvin v. Madison Metro. Sch. Dist.*, 840 F.2d 412 (7th Cir. 1988).

A principal was terminated and appealed the decision of the lower court which dismissed his petition for reinstatement. The appeals court affirmed the dismissal, finding sufficient evidence that the principal had sexually harassed a job applicant and a teacher (though two years earlier), which provided the impetus for the discharge on the basis of incompetency. *Phillips v. Plaquemines Parish Sch. Bd.*, 465 So. 2d 53 (La. Ct. App. 1985).

An elementary school principal for five years was reassigned to a teaching position and, one month later, was discharged (along with eight teachers) due to financial problems in the district. A hearing before an ALJ found the discharge was for cause and found the principal had less seniority than other employees. She then brought suit claiming discrimination on the basis of sex and asserted equal pay claims. The district court granted summary judgment to the school board of trustees on all federal claims and dismissed state claims. The principal appealed. The appeals court held that summary judgment for the trustees was precluded as material issues of genuine fact existed as to whether the board of trustee's actions were in response to unlawful sex discrimination. The court reversed the grant of summary judgment in favor of the district board of trustees based on the reassignment and discharge, but found no monetary liability. The court also reversed declaratory judgments under section 1983 and declaratory relief and damages under section 1985(3). The court remanded for reinstatement of the state claims. *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982).

A personnel supervisor raised due process and equal protection claims and asserted that she was discriminated against on the basis of sex. Though the court denied the school board's motion for summary judgment, the plaintiff could not show a right-to-sue letter and so the title VII claims were dismissed for failure to state jurisdictional grounds. The court also dismissed the sections 1983, 1985, and 1986 claims on various procedural matters. *Patton v. Conrad Area Sch. Dist.*, 388 F. Supp. 410 (D. Del. 1975).

Civil Rights Section 1983

The appeals court reversed the district court's denial of the government officials' motion for summary judgment, and remanded to grant partial judgment on the issue of qualified immunity, and to proceed to trial in this case involving allegedly politically motivated personnel actions. The plaintiff who was a director of a school, claimed her rights were violated when a co-director was appointed and shortly thereafter, she was transferred to an administrative position in the regional offices. She claimed the transfer was in retaliation for her support of a disfavored political party, but did not

assert any facts to negate the defendant's entitlement to summary judgment. *Castro-Aponte v. Ligia-Rubero*, 953 F.2d 1429 (1st Cir. 1992).

A principal who brought suit under section 1983 alleging he was coerced into resigning in violation of his constitutional rights, also claimed defamation, invasion of privacy, and wrongful discharge. The appeals court affirmed the district court and found all charges to be frivolous and awarded attorney fees to the defendants under section 1988. The principal was in violation of the district's residency requirement for eight years, and was given the option of resignation or termination, and he chose resignation. *Munson v. Milwaukee Bd. of Sch. Directors*, 969 F.2d 266 (7th Cir. 1992).

A principal claimed a civil rights violation under section 1983 when he was temporarily suspended with pay during the term of the superintendent's investigation of a policy which resulted in the principal's reprimand of a teacher who failed to follow the policy. The teacher had called the fire department after smelling an odor. The principal reprimanded her in front of the students for not informing him of the odor so that he could call the fire department. The court found no deprivation of property interest in the suspension as he had no right to go to work, and no liberty interest implication or damage to his reputation despite the teacher union's assertions that the principal was "threatening the lives of the children." The court granted the district's motion for partial summary judgment. *Terry v. Woods*, 803 F. Supp. 1519 (E.D. Wis. 1992).

A probationary elementary school principal was nonrenewed during the term of his contract on the basis of incompetence, an inability to get along with others, and a lack of tact. He filed suit claiming violation of his constitutional rights. The appeals court affirmed the district court's grant of summary judgment to the school district, finding no due process violations. Though the reasons for the dismissal were stigmatizing, court found no liberty interest implication, since the reasons were not public knowledge, but were stated in a letter addressed to the principal. *Hayes v. Phoenix-Talent Sch. Dist. No. 4*, 893 F.2d 235 (9th Cir. 1990).

Two superintendents challenged state legislation that created early retirement incentives, but excluded superintendents from those public employ-

ees entitled to elect early retirement. They claimed violations of their due process and equal protection rights under section 1983. Using a rational basis standard, the court found that the primary intent of the law was to decrease the number of employees on the state payroll, presumably eliminate the positions, and thereby, save money. The only members in the same retirement system as the superintendents eligible for the incentive were those employed by state agencies. School districts were not found to be nonstate employees under Arkansas Code, as they were employees of a local school district. *Haley v. Hall*, 733 F. Supp. 1275 (E.D. Ark. 1990).

Four administrators who had been reassigned to classroom teaching positions allegedly for budgetary reasons brought a civil rights action under section 1983. One claimed the reassignment was in retaliation for running against the superintendent in the election for the position, and the other three for supporting her in that campaign. The court held that the constitutional rights of the candidate and one of the administrators were violated when retaliation for their political activities motivated the superintendent's actions. The court ordered reinstatement, back pay, and attorney fees under section 1988 for both victims. The other administrators were found to have been transferred in violation of the state tenure laws, and back pay and reinstatement were ordered. *Bundren v. Peters*, 732 F. Supp. 1486 (E.D. Tenn. 1989).

A principal who was denied tenure and transferred to another position during the term of her administrative contract claimed procedural due process civil rights violations under section 1983. The court found that a violation of state statute did not constitute a violation of the Federal Constitution; the court vacated and remanded to the district court to review the constitutional due process claim involving notice. *Ray v. Birmingham City Bd. of Educ.*, 845 F.2d 281 (11th Cir. 1988).

A principal had been in an altercation with another administrator which resulted in a three-day suspension without pay, and with a student which resulted in criminal charges against him. Further, he admitted he needed tranquilizers due to extreme stress. The school committee placed him on leave and required that he seek psychiatric care before returning to work. The physician wrote a report

favorable to the plaintiff, who was then reinstated. After the school committee met with the psychiatrist to discuss the report without the principal in attendance, suit was filed. The appeals court affirmed the district court finding that neither the school board's requirement that the principal (who subsequently was demoted when his school was closed) undergo a psychiatric evaluation violated the principal's privacy rights; nor did the meeting with the psychiatrist. The court found that the matter of public interest in maintaining a safe educational environment outweighed the principal's privacy interests. *Daury v. Smith*, 842 F.2d 9 (1st Cir. 1988).

After the superintendent of schools was relieved of his duties with pay, the board of education voted to terminate his contract. The dismissal had been highly publicized in the media: a board member was quoted as saying, "we needn't accept crumbs." After the former superintendent had not been successful in gaining an interview with six other school districts, he filed suit, claiming violations of his due process rights and liberty interests. The appeals court affirmed the district court's grant of partial summary judgment to the board. The court found no deprivation of property interests under *Loudermill* requirements (470 U.S. 532 (1985)). Nor did the court find any evidence of stigma implicating liberty interests, such as moral turpitude, but merely statements relating to the superintendent's ability to do his job and get along with others. *Adams v. School Dist. No. 5 of Jackson County, Or.*, 699 F. Supp. 243 (D. Or. 1988).

A superintendent brought a civil rights action under section 1983 alleging deprivation of his liberty and property interests, as well as breach of contract claims and infliction of emotional distress. After the board relieved him of his duties seventeen months into his three- and one-half-year contract, the superintendent continued to draw a salary for six months, and brought suit when the payments ceased. The superintendent's motions for summary judgment and attorney fees were denied without prejudice. The court did find a prima facie civil rights claim in the contract that provided for dismissal for good cause and which required notice and a hearing. However, the appeals court dismissed both the liberty interest claim (since there was no public discourse concerning the dismissal) and the breach of contract claim, though the tort

claim survived. *Courtemache v. Enlarged City Sch. Dist. of Middletown, N.Y.*, 686 F. Supp. 1025 (S.D.N.Y. 1988).

A junior high school principal with tenure filed under section 1983 claiming that his liberty interests and due process rights were violated when the Chancellor of the board of education prohibited the local community district board from considering him for the position of deputy superintendent. The principal had previously been found guilty of soliciting campaign contributions for his father (an elected official) among staff under the guise of "loans" which he refused to pay back. The court found that the Chancellor's actions as chief executive did not violate the state Decentralization Law, and the plaintiff received the minimum due process required. The plaintiff's claim that his reputation was injured, restricting him in his ability to seek employment, did not prevail as no defamation existed. Motion to dismiss was granted to the Chancellor. *Lavelle v. Quinones*, 679 F. Supp. 253 (E.D.N.Y. 1988).

The circuit court affirmed the holding that a school superintendent was discharged due to her political affiliation. The superintendent, with eighteen years in the position, brought suit under section 1983 after she received notice in the mail that her credentials had been revoked and she was dismissed as superintendent. She successfully showed that her political activities and affiliation led to the discharge and that she was denied due process. She was reinstated with compensatory and punitive damages; the court remanded for recomputation of back pay. *Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255 (1st Cir. 1987).

First Amendment

A principal was transferred from his position to another administrative position which he claimed was motivated by both personal and political reasons. After the state tenure commission reversed the transfer order, the school board petitioned the court which ordered the commission's decision vacated. Appeal was brought by the commission and the principal. The court affirmed the board's action and held that evidence existed which demonstrated that the superintendent's recommendation to transfer the principal was based on a survey of staff showing low morale and dissension in the

building and the testimony of nine teachers who attested to the principal's lack of leadership and racial bias. *Alabama State Tenure Comm'n v. Phenix City Bd. of Educ.*, 467 So. 2d 263 (Ala. Civ. App. 1985).

Freedom of Association

An assistant principal claimed her First and Fourteenth Amendment rights of freedom of association were violated after she filed a grievance with the union concerning a change in her performance rating after her return from medical leave. Shortly after prevailing on the grievance, she was assigned to classroom duties, not administrative duties, allegedly in retaliation for the grievance. The district court dismissed the case with prejudice, and on appeal, the court affirmed. The court found that the plaintiff's claims to First Amendment protection under *Connick* (461 U.S. 138 (1983)) were not on a matter of public concern, but were merely private, personal issues. *Griffin v. Thomas*, 929 F.2d 1210 (7th Cir. 1991).

The appeals court affirmed the district court finding that the superintendent of schools was demoted due to her political affiliation and correctly ordered her reinstatement. However, the issue of back pay was remanded for a hearing. *Estrada-Izquierdo v. Aponte-Roque*, 850 F.2d 10 (1st Cir. 1988).

Freedom of Speech

A central office budget and curriculum director was demoted to vice principal of a high school for "at risk" students in a district-wide restructuring. She filed in state and federal court claiming that her First Amendment rights of free speech were violated, asserting that her reassignment was in retaliation for speaking out against the restructuring plan. The school district moved the case to federal where the state claim was consolidated. The district court denied the plaintiff's motion to remand the state suit, but certified the question for interlocutory appeal. The appeals court reversed and remanded for further action to state court finding no federal jurisdiction for the state claims. *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362 (5th Cir. 1995).

A superintendent, due to matters of public concern, actively lobbied against a slate of candidates for the school board and was relieved of his duties

when they were elected (with full pay through the term of his contract). He filed suit claiming violations of his freedoms of speech and association; JNOV was granted in favor of the school board. On appeal, the court affirmed, and held that the school board depended on the superintendent to implement its policies and maintain confidentiality, and without that working relationship, the board could not effectively perform. *Kinsey v. Salado Indep. Sch. Dist.*, 950 F.2d 988 (5th Cir. 1992).

A principal, who had been terminated for conduct "unbecoming a teacher" when he introduced a black teacher to a stranger as [his] "resident nigger," was reinstated and awarded in excess of one million dollars. Punitive damages had been assessed against the teacher union and its local managing agent for public lobbying and conspiracy with the school board in seeking the principal's discharge. The school board appealed the judgment on jury verdict for the principal. The appeals court reversed and vacated. The court held that the protests against the principal's actions were protected First Amendment speech as a redress of grievance, and were not merely intended to harass. *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292 (6th Cir. 1992).

A principal claimed the nonrenewal of her contract was in response to her "forceful and professional" criticism of the school board at one of its meetings and brought suit under section 1983 seeking monetary damages against the board members in their individual capacities. The supreme court held that the defendants were not entitled to qualified immunity on the First Amendment claim as the speech was a matter of public concern, and in so doing, affirmed the denial of summary judgment. However, the board was held qualifiedly immune with respect to the section 1983 claim. Nevertheless, the high court reversed the plaintiff's claim that her right to continued employment was denied without due process of law. *Carrillo v. Rostro*, 845 P.2d 130 (N.M. 1992).

A probationary middle school principal was terminated and claimed the discharge was anti-Semitic and in violation of his rights of association, speech, and religion. He also charged that the district attempted to move his child with disabilities into an inappropriate special education placement in retaliation for exercising his constitutional rights concerning his role in a school board campaign.

The court granted summary judgment to the principal regarding the special education and election retaliation issues, though no anti-Semitism was found where the district showed the termination resulted from the inability to work with women, minorities, staff, and parents. *Ludd v. Rockville Ctr. Union Free Sch. Dist.*, 1990 U.S. Dist. LEXIS 13594 (E.D.N.Y. Mar. 9, 1990).

A superintendent, suspended for campaigning against a slate of school board candidates, claimed his First Amendment rights of freedom of speech were violated. The appeals court reversed the district court decision in favor of the school board. The appeals court held that the speech was protected, as it outweighed any interest the school board might have had in maintaining a loyal working relationship with the superintendent. The court further noted that the public should not be denied the unique point of view of a superintendent when candidates campaign for election to the school board. *Kinsey v. Salado Indep. Sch. Dist.*, 916 F.2d 273 (5th Cir. 1990).

The school board moved for summary judgment in a case brought by a district director of state and federal programs who alleged her demotion was unlawful discrimination on the basis of age, sex, and race. The director also alleged that her free speech rights were violated when she investigated a NEA curriculum project without authorization and advocated its implementation. The superintendent recommended that the school board issue a formal reprimand. The board refused and instead assigned her probationary status and transferred her to an elementary school principalship. The court found that the disciplinary action did not violate due process or free speech rights as the former director's advocacy for the program was not found to be a public concern. State law claims of discrimination asserted by the former director were dismissed with prejudice. However, the court found that the section 1983 claims of equal protection and race discrimination could proceed to jury trial as the former director created an inference of discrimination where genuine issues of material fact existed. *Burks v. Benton Harbor Area Sch. Dist.*, 1989 U.S. Dist. LEXIS 17915 (W.D. Mich. June 30, 1989).

The plaintiff, a human relations coordinator and affirmative action officer in a public school district,

claimed her demotion to administrative assistant was in retaliation for her complaints that she was sexually harassed by her supervisor. The alleged harassment was characterized by attempts to kiss the plaintiff, propositions, and suggestive conduct. The district court granted summary judgment to the defendants. On appeal, the court held that the First Amendment did not protect a public employee from retaliation for making private complaints of sexual harassment, as the complaints were not a matter of public concern, and affirmed the district court judgment. *Callaway v. Hafeman*, 832 F.2d 414 (7th Cir. 1987).

After the district court set aside a jury verdict in favor of a former high school principal who claimed his discharge was in violation of his First Amendment rights to free speech, he appealed. The principal's wife also worked in the district as a high school teacher and coach. She was notified that she was to be transferred to the junior high after her husband, the principal, failed to follow the superintendent's directive to "muzzle" her just two days after her election to a leadership position in the teacher union. The principal requested a special meeting of the board of education, which was well attended, and read a prepared statement concerning the transfer. He was then publicly reprimanded for the public "attack" on the board and superintendent. Shortly afterward, he was notified that his contract would be nonrenewed. The court of appeals found that the speech before the board represented a matter of public concern as indicated by high attendance at the meeting, the presentation of signed petitions showing disfavor for the transfer, and the fact that the teacher was the varsity coach. Further, the court found that the speech would not have caused a disruption in the working relationship between the principal and the superintendent. Consequently, the speech was held to be protected and the discharge in violation of the First Amendment; no entitlement to presumed damages under section 1983 was found for the principal, and board members were not entitled to qualified immunity. The circuit court reversed and remanded to enter judgment in accord with the appeals court findings. *Lewis v. Harrison Sch. Dist. No. 1*, 805 F.2d 310 (8th Cir. 1986).

A principal was terminated after making sexual remarks which intimidated teachers. He claimed his speech was protected under First Amendment guarantees, though his discharge was upheld by

the state board of education and the lower court. On appeal, the court affirmed, holding that the board acted within its authority to terminate the principal, notwithstanding the action was more severe than was recommended by the professional practices board. *Rabon v. Bryan County Bd. of Educ.*, 326 S.E.2d 577 (Ga. Ct. App. 1985).

After a principal had been reassigned to classroom duties and one month later discharged for financial reasons, she brought suit claiming sex discrimination in compensation, reassignment and discharge. Though summary judgment had been granted to the district's board of trustees, on appeal, the court found questions of material fact existed. The principal had sent a telegram to each board member protesting the reassignment of a particular teacher to her building. The board admitted that the action displayed a lack of discretion and tact, which aided the decision to reassign her once the superintendent recommended doing so. The court stated that the telegram was protected and not public speech, however, the court questioned if the telegram played a part in her reassignment, then it may have played a part in her discharge. The matter of summary judgment was reversed. *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982).

The plaintiff, who had been removed from her principalship and reassigned to classroom teacher, was found to have been discriminated against on the basis of sex, though not race. After her reassignment, the plaintiff had been unable to attain another administrative position in the district. Though she was told she would receive notice of position vacancies, she did not, and the master determined that openings for two assistant principalships and one principalship were intentionally kept from her. The special master ordered that she be returned to a principalship with full benefits, seniority, and tenure. Back pay was denied because the plaintiff did not mitigate her damages by accepting an assistant principalship that was offered to her. The case was rereferred to another magistrate to determine appropriateness of attorney fees. *Williams v. Hoffmeister*, 520 F. Supp. 521 (E.D. Tenn. 1981).

Freedom of Religion

The circuit court affirmed the decision of the school board to demote a principal who imposed

her religious beliefs on staff when she referred to God in faculty memos, quoted scripture when exercising administrative control, and used her religious beliefs to justify her decisions. On appeal brought by the former principal, the court vacated the trial court decision, holding that the plaintiff's exercise of her religious beliefs was a motivating factor in the board's decision to demote her. The case was remanded for further proceedings to determine if the board would have come to the same decision absent the protected conduct. *Hooks v. Smith*, 781 S.W.2d 522 (Ky. Ct. App. 1989).

Freedom of Expression

An administrator, who was reassigned to a newly created position mid-year after testifying in court against the superintendent and school board, claimed the action was retaliatory and violated her rights to free expression. The district court held the superintendent individually liable, absolved the school board of liability, and failed to grant reinstatement and back pay. On appeal to consider the school board's liability, the court reversed the decision to deny back pay and reinstatement and affirmed the superintendent's individual liability when it failed to consider whether the retaliatory action constituted board policy or custom. The court remanded that issue and for further proceedings concerning relief. *Reeves v. Claiborne County Bd. of Educ.*, 828 F.2d 1096 (5th Cir. 1987).

Disability

This case consolidates the claims of discrimination by a husband and his wife (a school bus driver who claimed her nonrenewal violated her due process rights) against the school district. The husband, a former principal, claimed his contract was nonrenewed in violation of his liberty and property interests under section 1983, and in violation of section 504 and state tort law, as he was a recovering alcoholic. The court granted the school district's motion to dismiss, finding no protectable property interests for either plaintiff. The court found that the principal's nonrenewal was for economic reasons, lack of proper certification, and that he was not excluded from the position solely by reason of his handicap. *Pierce v. Engle*, 726 F. Supp. 1231 (D. Kan. 1989).

Marital Status

A superintendent and high school principal brought suit under state law alleging that the school board of trustees' policy prohibiting spouses from working in the same district was discriminatory to them on the basis of their marital status. Both men (representing a total of thirty-five years in the district), had wives employed by the board as tenured teachers. Two months after the adoption of the policy, the superintendent was discharged and the principal was reassigned to a classroom teaching position. The district court held that because the marital policy did not require a person to have any particular status in order to qualify or retain

employment, summary judgment was granted to the school board. On appeal, the supreme court broadly interpreted the state statute prohibiting discrimination on the basis of marital status by including the identity and occupation of one's spouse and not merely the state of whether one is married. The court stated that if the couples were divorced, they could have remained in their former positions, therefore entitling the plaintiff to judgment as a matter of law; the court vacated summary judgment in favor of the board and remanded the case. *Thompson v. Board of Trustees, Sch. Dist. No. 12, Harlem, Blaine County*, 672 P.2d 1229 (Mont. 1981).

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Discrimination in Hiring Teachers for Administrative Positions

Prepared by Mary L. Motley, Cleveland State University
Director, Student Services

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Each of the following cases examines issues related to the hiring of teachers for administrative or supervisory positions within public K-12 school systems. The cases are presented in chronological order within each category.

Gender Discrimination

A nineteen-year veteran female teacher filed charges that her school system had unlawfully discriminated against her based solely on her sex when it failed to promote her to various administrative positions. The plaintiff filed a motion for preliminary injunctive relief prohibiting her school system from making permanent their recent appointment of a male to the high school principal position, for which she had applied and was rejected. The court using the four-prong test established by the Eleventh Circuit Court for determining whether preliminary injunctive relief should be ordered, granted in part and denied in part the plaintiff's motion. Plaintiff prevailed in the first step showing that she and appointed male were equally qualified for the position, that the board believes that females are less able to deal with disciplinary problems than are males, that there are no females currently holding any type of administrative position at the secondary level in the system, and that females currently hold eighty-one percent of the teaching positions within the district. In regards to irreparable harm, the second prong, the plaintiff argues that since secondary administrative positions only become available every few years and that she will likely prevail in her title VII claim, failure of the court to injunctive relief cost her valuable time and experience. To some extent the court agreed with the plaintiff but based on expected retirements in the next two years it was unwilling to prevent the permanent appointment of the selected male. However, the court felt that irreparable harm would certainly face the plaintiff if she does not obtain immediate preliminary relief to ensure that she will obtain any position that does open. The third prong, the court decided when it ordered the type of preliminary relief it felt was appropriate. The court rejected the plaintiff's motion to temporarily enjoin the school district from making permanent the male appointed. However, the court did order that the school system not fill any available secondary administrative position or elementary principal position without

permission of the court. In regards to the fourth prong, related to public interest, the court felt confident that the proposed relief would serve the public by ensuring that provisions of title VII would be faithfully enforced. *Hicks v. Dothan City Bd. of Educ.*, 814 F. Supp. 1044 (M.D. Ala. 1993).

A junior high school teacher brought claims of sex discrimination against her school district when they failed to promote her to a position of junior high school principal. The plaintiff was able to establish a prima facie case and then meet her burden of proving that the reasons given by the defendants for not hiring her were discriminatory in nature. The Eighth Circuit Court of Appeals remanded the case to this court for computation of back and front pay. The court, in this case, ordered the school district to begin monthly payments to the plaintiff which reflect the difference in her present salary and what she would be making if the school system had not discriminated against her in their hiring practices. Payments are a substitute for immediate promotion which could not occur because there were not positions available. Monthly payments will continue until plaintiff is placed into the position of junior high school principal. The court further ordered the school district to pay the plaintiff \$71,242 in back pay and in addition prejudgment interest in the amount of \$13,841.03. This back pay award is based on the calculations of what the plaintiff would have made as income had she not been intentionally discriminated against by the school district. *Willis v. Watson Chapel Sch.*, 749 F. Supp. 923 (E.D. Ark. 1990).

When a female teacher holding a master's degree and appropriate state certification for principal or superintendent appointment was denied promotion within her system, she filed charges claiming sex discrimination. The circuit court denied the female teacher a jury trial and then determined that she had not established a prima facie case of sex discrimination nor was she entitled to apply her seniority status as background to her claims of discrimination. The teacher appealed to the Supreme Court of Appeals of West Virginia. The appeals court held that the teacher's claim of sex discrimination was an injury to the health, welfare and dignity of the victim and in this case, is closely related to tort. It said the teacher had the right to a trial by jury for her factual claims that would entitle

her to money damages for personal injury. In addition, the court said that the teacher had offered enough proof of discrimination to establish a prima facie case. The court continued by saying that because discrimination is essentially an element of the mind there will probably always be very little direct proof and the teacher had presented sufficient evidence to infer that the school's decision not to promote her was based on unlawful discriminatory practices. The Supreme Court of Appeals then reversed the circuit court's decision and remanded the case for a jury trial. *Perilli v. Bd. of Educ. Monongalia City*, 387 S.E.2d 315 (W. Va. 1989).

A female teacher denied nine administrative positions brought charges against the board and superintendent alleging title VII sex discrimination violations. On the basis of both direct and circumstantial evidence the magistrate found that the school system had failed to seriously consider the teacher for any of the administrative openings she sought on the basis of her sex. The records clearly indicate that the teacher, in this case, was more qualified than any of the men appointed to the positions. The plaintiff was successful in establishing a prima facie case when she demonstrated that the reasons given for not hiring her were subjective, inconsistent and motivated by unlawful sex discrimination. In regards to front and back pay the circuit court agreed with the defendant that the point from which front and back pay calculations were determined constituted an error. The teacher had failed to apply for her first position until after an appointment had been made so adjustments to the monetary calculations were appropriate. The court rendered the decision of the magistrate vacated and remanded the case for recalculation of front and back pay awards. *Spears v. Board of Educ. of Pike County, Ky.*, 843 F.2d 882 (6th Cir. 1988).

A female physical education teacher brought charges against her school district alleging that she was discriminated against on the basis of gender when she applied for the administrative position of athletic director. Defendants in this case argued that the plaintiff could not establish a prima facie case of disparate treatment because the athletic director appointment was a combined position and that the job would require her to also be the head football coach, an aspect of the job that she was not qualified to hold. The defendants testified that no consideration was given to the plaintiff's gender

only to her lack of qualifications to coach football. Based on testimony, exhibits and evidence of the trial, the court concluded that the position of athletic director for which the plaintiff had applied was, at the time of her application, a separate position from head football coach. In addition, the court concluded from evidence presented by expert witnesses that the plaintiff was qualified for the position of athletic director. Also noted by the court was that previously the position of athletic director had not been held by the football coach but by an assistant principal. The court concluded that the desired combination of head football coach and athletic director was merely an impermissible preference which unlawfully excluded plaintiff for consideration for this position. Accordingly, the court awarded the plaintiff an award of back pay and immediate placement into the athletic director's position. *Wynn v. Columbus Mun. Separate Sch. Dist.*, 692 F. Supp. 672 (N.D.Miss. 1988).

A female teacher brought employment sex-based discrimination charges against her school district when system officials refused to promote her to any of thirteen principal and assistant principal positions. The alleged sexual discrimination occurred over a five-year period of time from 1981-85. The plaintiff successfully established a prima facie case of unlawful, intentional discrimination against her employer. The school system rebutted the claims of the plaintiff by producing evidence that raised a genuine issue of fact as to whether the employer discriminated against the plaintiff. The defendant claimed that when the teacher was indicted and tried, but found not guilty of the murder of her husband, that promotion of the teacher to an administrative post would have outraged the community and parents. In addition, the school system contended that the males appointed to the administrative post were more qualified than the plaintiff. The plaintiff then persuaded the court that an unlawful discriminatory reason more than likely motivated the employer by clearly showing that the standard operating procedure for the district has been to discriminate against female teachers and to give position of substantial authority to men only. Evidence reflected that several outstanding women had left the system after being turned down for administrative positions. The system was inconsistent in evaluating qualifications for the administrative positions whenever women applied for promotion, and lastly she convinced the court that

by 1980 the murder incident had faded away and was no longer a major concern to parents, other educators or the community. A judgment was entered in favor of the plaintiff and the defendant school system was ordered to grant back pay and other benefits to the plaintiff. Beginning in 1987-88 the defendants were to pay plaintiff as if she were a principal and the plaintiff would have first right of refusal to any principalship which opened in the district. *Tye v. Houston County Bd. of Educ.*, 681 F. Supp. 740 (M.D. Ala. 1987).

A female teacher brought claims against her school board and school officials for sex-based employment discrimination under section 1983, title VII, and Michigan Elliott-Larsen Civil Rights Act when they failed to promote her to an assistant principal position. The teacher was employed as the coordinator of the district's high school completion program, had earned a master's degree and was certified as a school principal. When the teacher's job description was changed due to the retirement of her immediate supervisor and she was denied a salary increase she applied for the assistant principal position. This position required that applicants have public school teaching experience which she was not able to satisfy. She was granted an interview but since she did not meet qualification she was not promoted. The teacher filed with EEOC claiming discrimination. Immediately following this process her job responsibilities were changed as was the person to whom she reported. In addition, the teacher claimed she was sexually harassed by the appellants. The circuit court held that exercise under Michigan Elliott-Larsen and Civil Rights Act was justified and that the jury instructions adequately informed members that the ultimate question was whether the teacher was intentionally discriminated against based on her sex. Additionally, the court said that the findings indicated that the school had intentionally discriminated against the teacher in violation of both title VII and section 1983. However, the district court's findings on retaliation were reversed and the case remanded for reconsideration of the title VII back pay award as it relates to the reversal of the retaliation claim. *Kitchen v. Chippewa Valley Sch.*, 825 F.2d 1004 (6th Cir. 1987).

A female teacher appealed the district court's decision that her school did not discriminate against her based on her sex when it failed to promote her

to an administrative position. Appellant argues that the district court's finding that she would not have been hired even if she had been a man were clearly erroneous. Likewise, she said the district court's finding of no retaliation is also clearly erroneous. The Eleventh Circuit Court affirmed the district court decision on both counts saying that the two men hired were clearly more qualified based on positive supervisor recommendations. In contrast appellant's supervisors refused to give her positive recommendations saying she was inflexible, overly aggressive and abrasive. The factual finding of no retaliation, the court said, was within the district court's rights when it chose to believe the school system when they said that the only reason they met with appellant after she filed EEOC charges was to try to resolve the disputes amicably. The appellant was not able to demonstrate to the court's satisfaction this was not the case. *McCarthy v. Griffin-Spalding County Bd. of Educ.*, 791 F.2d 1549 (11th Cir. 1986).

A female teacher with forty-three years of teaching experience, a master's degree and appropriate administrative certification for the assistant principal position she was denied, filed title VII and section 1983 actions against her school system alleging sex discrimination. The district court entered judgment in favor of the school district and the teacher appealed. The court of appeals affirmed the district court's decision saying the school district's promotion of a male who had superior qualifications was a not a pretext to unlawful discriminatory practices. The teacher was without any prior administrative experience and was ranked tenth out of thirty-six applicants on the school district's pre-existing, specified criteria. The plaintiff was unable to meet her burden of persuading the court that the school district's articulated legitimate reasons for not hiring her were clearly a pretext for intentional discrimination. Likewise, the Seventh Circuit Court upheld the district court in its decision not to allow a former student to testify on the merits of the teacher's supervisory abilities, as evidence that she had knowledge if not experience, saying that the testimony was neither relevant nor required in determining whether the teacher was qualified for the assistant principal position. *Parker v. The Bd. of Sch. Comm'r of Indianapolis*, 729 F.2d 524 (7th Cir. 1984).

A female teacher filed title VII claims against her school system alleging that they failed to ap-

point her to an open principal position solely because of her sex. The district court entered judgment for the female candidate. The school district then appealed. The Court of Appeals of the Eighth Circuit, after a rehearing en banc, reversed and remanded the case. The court then found that although the school system articulated legitimate nondiscriminatory reasons for not hiring the female teacher, the reasons were pretextual and the system intentionally discriminated against the plaintiff solely on the basis of the teacher's sex. The school system again appealed the case. This time the circuit court reversed the district court's findings as clearly erroneous saying that it was not supported by substantial evidence, it evolved from erroneous conceptions of the applicable law and that it felt the district court had made a mistake. The court continued by saying the teacher was selected as a final candidate for the principal position from a pool of twelve candidates (ten male and two female). Both candidates were considered by the appropriate search committee and the female candidate was favored slightly until reference checks were completed. Following reference checks which indicated that the female was inflexible, had staff relation problems and was insensitive to student needs, a second follow-up of other references was sought. In addition, the court relied on the undisputed evidence that the male candidate had previous principal experience and very high recommendations from both administrators and teachers. In the court's opinion the female teacher was not able to prove the school system's reasons were pretextual and reversed the judgment of the district court. *Danzl v. North St. Paul-Maplewood-Oakdale Indep. Sch.*, 706 F.2d 813 (8th Cir. 1983).

Female teachers appealed the district court's decision in favor of the school district on their individual and class claims of sex discrimination in pay, job assignments and promotion to administrative position in violation of title VII of Civil Rights Act of 1964. This summary will review only those claims alleged to be violations related to promotion of teachers to administrative positions.

In the first claim a female teacher applied for the position of director of teacher's center. The school district appointed a male and the plaintiff filed title VII claims against the school district. The district court found that the teacher had established

a prima facie case but failed to prove that the school district's legitimate, nondiscriminatory reasons for not appointing her were pretextual. The district found in favor of the school district saying that the school's proffered reasons were the true reason for the employment decision. On appeal the circuit court found the district court's decision regarding this issue was clearly erroneous. The court records indicate that the school district offered legitimate nondiscriminatory evaluations of the two finalists when it said that the female plaintiff in this case had superior educational qualifications and administrator certifications. However, the school district felt that in regards to subjective criteria such as leadership qualities, ability to work with students and teachers, understanding of job responsibilities, and general personality, the two candidates were equally qualified. The school district then said they selected the male applicant because of his workshop experience and his availability as measured by his attendance record. Although the circuit court agreed that the school district had met their burden, the court disagreed that the plaintiff did not establish that the school district's proffered reasons were not the true reason she was not hired. The teacher, in the circuit court's opinion, demonstrated that the true reason she was not hired was because she was a woman with children and the school district believed that her family responsibilities would interfere with her performance as director. The circuit court reversed and remanded the case to district court with directions to grant appropriate relief.

Under the class claim female appellants alleged classwide sex discrimination violations of the school system in the under utilization of qualified female teachers by failing to promote them to responsible administrative positions. Appellants relied principally upon statistical data prepared by an expert witness to demonstrate their claim. School district rebutted statistical evidence by showing that although at first glance the data reveals promotion disparities which are suspect, further examination shows that statistical data is undermined by small sample sizes and failure to consider the effect of education and experience. The circuit court affirmed the district court's judgment saying the appellants failed to establish a prima facie case in this classwide claim. *Coble v. Hot Springs Sch. Dist. No. 6*, (8th Cir. 1982).

School district appealed a district court's decision when it awarded a female teacher back pay and promotion in a title VII action in which she alleged that she had not been hired for an assistant principal position solely because of her sex. The school district, in its appeal, contended that even assuming they had discriminated against the teacher on the basis of her sex, the discrimination did not result in the teacher's failure to be selected as assistant principal. The school system claimed that other females, also interviewed for the position, would have been chosen ahead of her. The Fourth Circuit Court agreed with the school system and reversed that part of the district court's judgment that ordered back pay and promotion saying that although the teacher met the minimum qualifications for the position, two other female applicants were more qualified for the position. Four of the five interviewers testified that the two other female applicants were ranked ahead of the teacher and that they would have hired either of them before hiring female teacher in this case. The school system did not appeal the district court's ruling that it had unlawfully discriminated against the appellee on the basis of her sex. The circuit court affirmed this part of the decision. *Patterson v. Greenwood Sch. Dist. 50*, 696 F.2d 293 (4th Cir. 1982).

A female teacher filed motions of sex discrimination against her school system when it failed to appoint her to four administrative positions for which she applied, was qualified and was rejected from when white males were hired. Defendants claim that plaintiff's Title VII allegation should only apply to one of the four positions because of time limitations. The plaintiff acknowledges that not all of her claims were filed within the usual time limitations but argues that because of the system's continuing violations the court should extend that period. The court disagreed saying the plaintiff had not demonstrated any continuing violation of the school system. Although the court acknowledged that the plaintiff had been rejected for four positions, no evidence of a discriminatory operation policy or procedure existed nor was there evidence that this practice holds true for females in general. The court then said, with the exception of the principal position, the claims were time-barred under title VII. Second defendants argue that the section 1983 charge should be dropped because of failure of plaintiff to bring claim within 180 days.

The court denied the defendants' motion without prejudice pending resolution disposition of factual issue. Lastly, defendants claim that plaintiff has failed to state a claim against them upon which relief can be granted. The court disagreed and denied this motion saying that plaintiff should be allowed to complete the discovery process to determine if defendant discriminated against her based on her sex. *Erdmann v. Board of Educ. Union County Regional High Sch. Dist. No. 1*, 541 F. Supp. 388 (D.N.J. 1982).

In an equal employment opportunity case, an African-American female established a prima facie case of sex discrimination. During a five-year period and the entire tenure of the present superintendent, all principalship positions had been filled with white males at the secondary level. The plaintiff applied for and was qualified for each vacancy. Evidence established that the superintendent and other school officials intentionally discriminated against plaintiff because of her sex and their beliefs regarding gender roles. The court ordered the school board to promptly place plaintiff in principal, assistant principal or supervisory position for which she is qualified within the school system. The plaintiff was awarded appropriate benefits, seniority and tenure status which she would now have if she had been continuously employed in such a position for the past two years. *Williams v. Hoffmeister*, 520 F. Supp. 521 (E.D.Tenn. 1981).

In the initial trial by jury, the female plaintiff in this case filed a title VII complaint alleging that she was discriminated against by her employer on the basis of her sex for the administrative position of Student Activity Coordinator. The plaintiff claimed that a male less qualified than herself was selected for the position. The complaint was subsequently amended to include allegations of Fourteenth Amendment procedural due process violations. The court awarded judgment, compensatory damages and punitive damages to the plaintiff. Defendants then filed a motion for judgment notwithstanding the verdict, or in the alternative, for a new trial or amendment to the judgment. Regarding this issue the court held that there was sufficient evidence in the record to support the jury's findings on intentional discrimination based on plaintiff's sex. The court reflected that the unlawful discriminatory questioning of the

plaintiff during the interview process may have biased the search committee against hiring a female. In addition, the court denied the motion to overturn procedural due process damages based on the failure of the district to provide a written job description of the position which may have biased the committee in their selection of a candidate for this position. In summation, the court determined that compensatory damages, punitive damages and attorney fees were appropriate and should be paid by defendant to plaintiff in this case as ordered by the trial jury. *Tyler v. Board of Educ. of the New Castle County Vocational-Technical Sch. Dist.*, 519 F. Supp. 834 (D. Del. 1981).

When her school system failed to select plaintiff to the position of district music coordinator a claim of sex discrimination was filed. The plaintiff is a certified K-12 music teacher with a Ph.D. in music and higher education administration and she had been employed for the previous three years in defendant's school system as a guidance counselor. The plaintiff established a prima facie case and the defendants rebutted the claim by giving what they said were nondiscriminatory reasons for selecting a male for the position. Their rebuttal included a fourteen-point argument highlighting the qualifications of the selected candidates. Among those considered major was the male's seventeen years of experience in the district, his administrative coursework, his strength in string instruments and the fact that he had never before qualified to receive a co-curricular contract. The plaintiff responded to this testimony by clearly showing she had superior qualifications on all but one of the fourteen points noted. In addition, the plaintiff offered and the court accepted statistical evidence that no female administrator was employed in the district from 1965 to 1976 and after 1976 only one woman held a vice principal position. Notwithstanding the above, the plaintiff pointed to the fact that the only qualification required on the job announcement was that applicants be certified to teach music in public education. Accordingly, the court ordered that the district immediately appoint defendant to position of district music coordinator. The judgment also included compensatory damages and attorney fees. *Reilly v. Board of Educ., Common Sch. Dist. 14*, 458 F. Supp. 992 (E.D. Wis. 1978).

Two female teachers in related cases brought charges of sex discrimination against their school

system when the school failed to appoint them to administrative positions. The first plaintiff certified both as an elementary school teacher and an elementary and secondary school principal was not offered any of three principalships within the school system. Subsequently plaintiff filed with EEOC. Plaintiff then claims that she was retaliated against by the district for filing charges when she was not hired as a reading specialist. After the plaintiff established a prima facie case defendants rebutted her charges of discrimination by claiming that all candidates were evaluated on the basis of interview results, seniority within the district, superintendent's recommendation, and oral and written evaluations. Plaintiff then attempted to demonstrate that the defendants' reasons were only a pretext for unlawful sex discrimination. The court, however, was convinced that the defendants did not discriminate against the plaintiff nor did they retaliate against her for filing charges since she was subsequently given a substitute principalship for an entire semester before this case came to trial. Likewise, the second plaintiff failed in her claims of sex discrimination when the district failed to appoint her as permanent principal following her appointment for five days as its substitute principal. The court ruled that the appointment of a white male with superior qualifications and administrative experience, who was already receiving a salary at an elementary school principal's level, was a fiscally sound decision for a district having financial difficulties. *Lombard v. School Dist. of Erie, Pa.*, 463 F. Supp. 566 (W.D. Pa. 1978).

Where a female teacher filed title VII charges, claiming that she was not promoted to the position of principal based on sex discrimination, the district court ruled that the school system's failure to appoint the female teacher as principal did not constitute sex discrimination in violation of the Civil Rights Act of 1964. The teacher appealed this ruling to the Eighth Circuit Court of Appeals saying the reasons articulated by the school system were pretextual and the sole basis for her rejection was unlawful sex discrimination. The court rejected the appellant's reasoning and affirmed the district court's decision. The court based its decision on the fact that the appellant had been dismissed from her school system as a teacher after two confidential hearings regarding her poor discipline in the classroom and her lack of mobility due to her excessive weight. The court concluded by saying

that the consideration of this information in the assignment of an elementary principal was appropriate and within legal limits and without sex discrimination. The claim that the hearings were confidential had no merit in this case. *Eckroth v. Flasher Pub. Sch. Dist.*, 583 F.2d 415 (8th Cir. 1978).

An unsuccessful female applicant for a high school guidance director position failed in her attempt to convince the court that the 180-day statute of limitations for title VII claims should be excused because she was unaware, during that time period, that she had been discriminated against. The court denied this request citing the fact that the plaintiff received a timely and direct letter informing her of the board's decision not to hire her for this position. The letter invited plaintiff to contact the principal if she had any questions regarding this decision. The plaintiff further tried to excuse her tardiness by claiming that this type of discrimination was ongoing. The court again rejected the plaintiff's claim saying that a single position did not constitute continuing discrimination. Lastly, an attempt was made by the plaintiff to say that the complaint had been timely since she had been issued a right-to-sue letter from the EEOC. The court said that the plaintiff had not met the Seventh Circuit jurisdictional requirement of 180 days and the right-to-sue letter does not decide the issue of timely filing and is not binding on this federal court on this issue. The court issued a judgment of dismissal of the complaint in this case. *Ashley v. Goshen Community Sch. Corp.*, 461 F. Supp. 22 (N.D. Ind. 1978).

A female employee in a Portland school system charged that she and other female employees were discriminated against in regards to the recruitment, hiring, promotion and assignment of employees to administrative positions within the system. In addition, the plaintiff charges that the system failed to keep accurate applicant records and they utilized sex-segregated job classifications. Her last allegation charges her system with retaliatory harassment and intimidation against her for filing charges. The plaintiff asked for compensatory and punitive damages under count III. The defendant school system has moved that all three counts be dismissed against them. The court complied and dismissed all three charges saying that her count I title VII allegation of sex discrimination is dismissed

because the plaintiff never actually applied for the position and having an application on file does not suffice as having made application for the position in question. The Fourteenth Amendment count II charge is dismissed because plaintiff did not name defendants in charges filed with the EEOC. The court said the plaintiff's claims for compensatory and punitive damages under count III were not recoverable under the equal employment provision of the Fourteenth Amendment. *Curran v. Portland Superintending Sch. Comm. etc.*, 435 F. Supp. 1063 (D. Me. 1977).

Race Discrimination

A Hispanic teacher brought action against her school system when she was passed over for the position of assistant principal and an African-American woman was appointed by the board. The plaintiff met her burden of proof and established that she is a member of a protected class, that she was qualified for the position, that she applied for the position and was rejected and that the board continued to seek applicants for the position in question after her rejection. The defendant employer rebutted the inference of discrimination raised by the prima facie case by clearly stating various reason for the appointment of the candidate selected that were racial nondiscriminatory. Plaintiff then pointed to inconsistencies in several of the defendant's reasons for not selecting her for the assistant principal position. The court agreed that there were genuine issues of material fact concerning the legitimacy of the defendant's proffered reasons for passing over plaintiff. Defendant's motion for summary judgment denied. *Olmedo v. Community Sch. Bd. for Dist. 17*, 756 F. Supp. 95 (E.D.N.Y. 1991).

A black elementary school teacher brought charges of race and sex discrimination against her school system when they failed to promote her to any of the available counseling positions that opened between 1979 and 1987. The district court dismissed the case with prejudice. The plaintiff appealed. The Eighth Circuit Court of Appeals affirmed the decision when it found that the district court had not been clearly erroneous in its ruling. Having reviewed the circumstances surrounding this case the court said that since the available positions in 1979 and 1987 were not a part of the

court record they could only be used as background evidence. The court noted that although the job positions were never officially posted or advertised by the school system the teacher admitted that she was aware of the openings. In spite of her knowledge she failed to officially apply for the 1984 openings and she had not completed required certification at the time the 1987 position was filled. The school system also testified that it was not aware of her interest in promotion until after the 1984 hiring. The court then concluded by saying that although the school district's hiring practices were not commendable the findings of this court do not demonstrate that the district court was clearly erroneous in holding that the teacher failed to establish a prima facie case of either gender or racial discrimination. *Chambers v. Wynne Sch. Dist.*, 909 F.2d 1214 (8th Cir. 1990).

An African-American school speech and language pathologist brought action against her school system alleging that their failure to appoint her to the position of assistant principal was a title VII violation. The school district was awarded summary judgment when the court determined that the plaintiff was less qualified than the candidate appointed by school district. However, the court acknowledged that the plaintiff was somewhat successful in presenting a prima facie case. Notwithstanding the fact that the plaintiff was not qualified for the position for which she applied, she was a member of a protected class, and she was rejected for the position and after her rejection the position remained open and the employer continued to seek applicants for the assistant principal position. The court determined that summary judgment for the defendant was appropriate based on the undisputed evidence that the plaintiff did not prove that she was qualified for any of the positions for which she applied. The plaintiff had no experience as a classroom teacher nor had she ever held any type of administrative assignment. In addition, the defendants have clearly demonstrated a legitimate nondiscriminatory reason for the decisions made by the board. The selection of other prospective administrators on the basis of their qualification in a race-neutral manner is in no way pretextual. *Featherson v. Montgomery County Pub. Sch.*, 739 F. Supp. 1021 (D.Md. 1990).

In a case involving a sixty-two-year-old African-American woman who claimed she was dis-

criminated against on the basis of race and age when she applied for and was rejected for the position of assistant high school principal, the court ruled in favor of the defendant school system. After the plaintiff established a prima facie case the defendants' rebuttal addressed the hiring process clearly demonstrating that both final candidates were given two interview opportunities and the candidate selected was clearly the superior candidate based on lawful nondiscriminatory questions and evaluation processes. The plaintiff was unsuccessful in her attempt to demonstrate to the court that the rationale given by the defendants was only a pretext. The court granted summary judgment to the defendants saying that the plaintiff did not meet her burden of proof when she came forward with only speculation and failed to raise a reasonable inference to contradict the evidence that legitimate, nondiscriminatory reasons were the basis for the decision not to hire the plaintiff for the assistant principal position in question. *Morton v. City Sch. Dist. of N.Y.*, 742 F. Supp. 145 (S.D.N.Y. 1990).

In a case that originally came to the courts in 1963, black school teachers brought action against the board alleging race discrimination in the hiring of principals within the school system. At that time, this circuit court found a pattern of racial discrimination in assigning principals and remanded the case in 1980. On remand the district court established a framework to determine which plaintiffs were entitled to relief and assigned this task to a United States Magistrate. All one hundred and four plaintiffs were presumed to be entitled to relief unless on an individual basis defendants were able to: (1) prove that plaintiff would not have been given the promotion absent any unlawful discrimination practices; (2) plaintiff had been offered and refused an assistant principal or principal position; (3) plaintiff did not suffer economic harm; (4) plaintiff was barred from further relief by some other legally cognizable affirmative defense. The magistrate recommended twenty-eight class members, the district court accepted recommendation and then added one more class member to the group to receive relief. All seventy-five non-recovering class members appealed. Appellant class members argued that their section 1983 claim should have received a six-year statute of limitations rather than the one year imposed by the district court. The circuit court in deciding this issue fully explored the applicability of the Chevron

Standards for granting retroactive status effect to uniform limitation periods for section 1983 claims. The court then said that expanding limitations periods would be unfair to school system because that limitation had been imposed on them for the past fifteen years of this case and it would allow teachers to litigate twenty-year-old claims. Based on this reasoning the circuit court affirmed the district court's decision.

Count II of the nonrecovering teacher's challenge was against the district court in its decision that those not entitled to relief were either not qualified for the position or that they would not have been hired even if unlawful sex discrimination had not been practiced by the district. The court in this case affirmed the district court saying that the school district's two requirements of having a principal certification and at least two years of administrative experience were justified and the practice was followed, at least after 1973. Additionally, the nonrecovering class members argued that a principal's certificate was not a business necessity and that it had a disparate impact on minority applicants. Likewise, they argued that the two-year requirement had a disparate impact on minorities. After reviewing the magistrate's record the court affirmed the decision on these issues saying that class members were unable to show that the pool of persons having experience and principal certifications was disproportionately white. *Foster v. Board of Sch. Comm'n of Mobile County, Ala.*, 872 F.2d 1563 (11th Cir. 1989).

An African-American female teacher filed claims against her school system alleging that they failed to promote her to a position of assistant principal using unlawful discriminatory practices. In addition, the plaintiff claims that the school retaliated against her by suspending its internal grievance process when it learned that she had filed discrimination charges with the EEOC. The defendants moved for summary judgment against the plaintiff when she waited until the ninety-first day to file her complaint after she received her right-to-sue letter from the EEOC, which requires timely filing within ninety days from receipt of letter. In addition, defendants claimed their actions do not constitute retaliation or adverse employment action and that summary judgment is appropriate because the present superintendent played no part in the acts complained of by the plaintiff. The

plaintiff responded by asking for summary judgment on her retaliation claim. Both motions were denied. The court ruled that the plaintiff had clearly established a prima facie case of retaliation, and that the plaintiff did respond in a timely fashion since the ninetieth day fell on a Sunday and the plaintiff had filed the following day. Notwithstanding this opinion the court felt summary judgment for the plaintiff was inappropriate where questions of whether the defendants actually intended to retaliate against the plaintiff were not clear. The court upheld filing of the claim and ordered that the ultimate question of the board's intent be determined at a later date. *McCauley v. Greensboro City Bd. of Educ.*, 714 F. Supp. 146 (M.D.N.C. 1987).

An African-American special education teacher appealed a district court's decision when it dismissed his title VII claims asserting that his school system failed to promote him to an administrative head teacher position because of his race. Appellant argues that the district court's ruling that the school district had legitimate nondiscriminatory reasons for not hiring him was clearly erroneous. In addition, appellant says the district court improperly held him to an improper burden of proof level. The court affirmed the district court saying that the decision to believe the school district's account of its nondiscriminatory motivation was not clearly erroneous when the decision was based on interviews of both candidates, prior experience evaluations and overall skills. Likewise, the court found that the district court was correct in shifting the balance to the appellant to prove that the system's reasons for not hiring him were only a pretext for unlawful discriminatory practices. Lastly, the court affirmed that regardless of whether evaluations submitted as evidence occurred before or after system's failure to appoint appellant it had sufficient findings that would have lead to the same conclusions of the court and therefore the evaluation evidence was harmless. *Nelson v. Pulaski County Special Sch.*, 803 F.2d 961 (8th Cir. 1986).

When a school system failed to promote an African-American teacher to any of three vacant administrative positions after a predetermination agreement had been reached between the school system, and the teacher with the aid of the EEOC, the teacher filed title VII charges. The district court

ordered the school system to appoint the teacher to a principal position within the district immediately. The court of appeals affirmed the district court's decision on each motion saying that the school did breach the predetermination agreement when they transferred acting administrators to the principal positions rather than appoint the applicant teacher who was qualified for each position. Further, the court found that the district court had not been clearly erroneous when it found that the system's selection of choosing white over black applicants was a result of intentional discrimination. Lastly, the court of appeals said the district court had not abused its discretion in ordering an immediate appointment for the applicant teacher as principal within the district. *Brewer v. Muscle Shoals Bd. of Educ.*, 790 F.2d 1515 (11th Cir. 1986).

An African-American male teacher alleged and the district court agreed that he had been consistently passed over for administrative positions and principalships that he was qualified to fill for racial reasons. The district court found that the school's records indicated that they had appointed less qualified white persons to each position using unlawful discriminatory practices. The school system appealed the district court's award of more than \$145,000 to the applicant teacher for back and front pay under title VII, compensatory damages under sections 1981 and 1983, punitive damages, court costs and attorney's fees. The court of appeals affirmed the district court's decision and remanded the case for determination of attorney fees and costs saying that a finding of intentional discrimination is a finding of fact and cannot be reversed unless it is clearly erroneous. Inasmuch as the district court relied on both direct discriminatory evidence and substantial circumstantial evidence to support the allegation, there was no clearly erroneous error. The court's records show that the system lowered objective standards to allow white applicants with less qualifications to apply for each position and then selected them based on subjective criteria while admitting that the hiring of black administrators could be a factor in those decisions because superintendents face re-elections. *Stallworth v. Shuler*, 777 F.2d 1431 (11th Cir. 1985).

A black female teacher brought discrimination allegations against her school district when they failed to promote her to position of principal or assistant principal on fifteen occasions. The district

court entered judgment in favor of the school district saying that the board did not discriminate on the basis of sex when they hired white males that were more qualified than plaintiff teacher. In addition, the court said that in one of the eight positions challenged and allowed under legal time limitations the plaintiff had officially withdrawn her application. Plaintiff teacher appealed district court's findings saying they were clearly erroneous. The circuit court in affirming the district court's decision said that although the teacher had established a prima facie case the board had also met its burden in articulating legitimate nondiscriminatory reasons for not promoting teacher. However, the court did agree with the plaintiff teacher that the board's subjective reasons should be subject to strict scrutiny review. Having done this, the court maintained that the board's reasoning that appointed candidates were more qualified rebutted her prima facie case and they were not pretextual. The court noted that although the circumstances do not warrant shifting the burden of persuasion to the board, it believed the board showed clear and convincing evidence for its decisions. Lastly, the court said that court records and evidence convinced the court that teacher did withdraw from one of the principalships in question. Circuit court affirmed trial court's decision. *Love v. The Alamance County Bd. of Educ.*, 757 F.2d 1504 (4th Cir. 1985).

An African-American female who brought sex and race discrimination charges against her school was successful in establishing a prima facie case, based on the fact that she is black, she is female, and that she was at least minimally qualified for the position and that the defendant continued to seek applicants for the position of principal after she was rejected. However, the plaintiff failed in her quest to establish that the defendants' claims that the decision to hire a white male for the position was based solely on qualifications was a mere pretext for unlawful discrimination practices. The court found that the defendants acted in good faith in determining that the white male was the most qualified of twenty applicants. Additionally, the court said that while a lack of blacks and females in administrative positions is a cause for concern it is not the determinate of whether the plaintiff is a victim of intentional discrimination. *Love v. Alabama Inst. for Deaf and Blind*, 613 F. Supp. 436 (D.C. Ala. 1984).

An African-American male brought title VII and section 1983 charges alleging that his school system violated his constitutional rights by repeatedly failing to promote him to a principal position. Plaintiff teacher claims that sixteen vacancies for principal positions opened during his search for such a position. The teacher applied for three of those positions and was rejected in each case. The teacher holds a rank I certificate in administration and supervision and had previously served as principal in another district before accepting his present teaching assignment. Whites with less objective qualifications received appointments in spite of the fact that they did not meet minimum qualifications of a rank I certificate and five years of experience as a principal. The school district offered nonracial reasons for the district's decisions including the fact that one of the positions had first been offered to a black teacher who turned it down. They also reported that the teacher's supervisor had turned in a number of negative recommendations regarding his teaching. Lastly, the superintendent admitted that he had subjective reservations regarding the plaintiff teacher's ability to perform as an administrator. The district court found that the defendants had successfully rebutted the prima facie case of intentional discrimination. Plaintiff appealed. The circuit court reversed the trial court's decision and remanded the case for back pay saying that since the defendant school system was operating under a federal injunction ending a regime of de jure segregation, the court is justified in requiring the school to justify its employment decision by demonstrating that those hired were better qualified than the appellant teacher. Further the court said that the school system's ability to prove legitimate reasons for their decisions was undermined by their failure to adopt written, objective, non-racial criteria for selecting principals. *Lee v. Conecuh County Bd. of Educ.*, 634 F.2d 959 (5th Cir. 1981).

A black female teacher failed in her motion for the court to reconsider its decision to grant summary judgment for the defendant on title VII charges of sex and race discrimination. The court denied plaintiff's motion to reconsider saying that in this case the plaintiff had set forth no specific facts that demonstrated that either a genuine issue still existed or that a violation had occurred after the school became subject to the sex and race

discrimination prohibitions of title VII. *Stovall v. City of St. Louis Bd. of Educ.*, 469 F. Supp. 551 (E.D. Mo. 1979).

In a class action suit where the defendants are charged with race discrimination regarding hiring and administrative promotion of African-Americans, the court ruled on the applicable statute of limitations in response to defendants' motion for partial summary judgment. While plaintiff's allegations were claimed under title VII of the Civil Rights Act of 1964 and U.S.C. sections 1981 and 1983 the court said defendants' motion for partial summary judgment is made based on relevant statute of limitations questions. The court held that any title VII claims which arose more than 180 days before the date charges were filed with the EEOC were time-barred by the applicable statute of limitations. Likewise, the court instructed that claims for back wages asserted under title VII are also time-barred, under a separate statute of limitations, if the acts complained of occurred more than two years prior to the filing of charges with EEOC as noted in 42 U.S.C. § 2000e-5(g). In addition, the court said that the question of applicable time limitations for claims filed under sections 1981 and 1983 must be treated separately from title VII claims and since neither specifically identify time limitations these should be borrowed from the most applicable state statute of limitations. In this case the state of Louisiana provides for a one-year limitation period from the date the claim is filed with EEOC. *Adams v. Jefferson Davis Parish Sch. Bd.*, 450 F. Supp. 1141 (W.D. La. 1978).

A Mexican-American teacher filed charges in district court alleging that her school system did not promote her to the administrative position of head teacher of the language department of a newly opened school solely on the basis of her race. The district court held in favor of the school district saying that no unlawful discriminatory practices existed at the time of the teacher's application. Further the court said that the charges filed under title VII and section 1983 could not be affirmed because the teacher was unable to establish a prima facie case since the court believed that the school district had clearly demonstrated that no position was available at the time of the teacher's application. The teacher appealed this decision to the Ninth Circuit Court of Appeals who affirmed the district court's decision saying that prior to the

opening of the new school the district had made known to its teachers the impending availability of administrative and teaching positions. Failure on the part of the applicant to apply was not grounds for national origin discrimination practices. In addition, the court referred to the fact that three other Mexican-Americans had at the appropriate time applied for administrative positions within the district and that two of them were appointed as head teachers in their respective departments and the third was promoted to an assistant principal position. The court concluded by saying that the teacher was denied the position because the position had already been filled at the time of her application. *Chavez v. Tempe Union High Sch. Dist. No. 213*, 565 F.2d 1087 (9th Cir. 1977).

In a class action suit alleging that schools discriminated against black teachers in their hiring and promotion practice based solely on their race, the district court denied all but one of plaintiff's claims, that being a black female denied promotion to an elementary principal. Plaintiffs appealed requesting the court to reverse the judgment of the trial court and order remedial measures to ensure practices free of racial discrimination. The Fourth Circuit Court after reviewing each claim said that the board had failed to justify its hiring and promotion practices. The court vacated district court's decision in regards to class action and remanded the case for reconsideration. *Morton v. Charles County Bd. of Educ.*, 520 F.2d 871 (4th Cir. 1975).

Other

A white male teacher filed charges of discrimination against his school district when they failed to promote him to any of several supervisory/administrative positions open in the district. The plaintiff, at the time of his application for each position, held the administrative certifications required for such positions in the state within which he resided. Plaintiff alleges that several of the candidates appointed did not hold appropriate certification for the positions to which they were hired by the board. Plaintiff claimed that defendants discriminated against him in violation of the Equal Protection Clause by unequally administering a facially neutral statute. The court in this case said that mere failure to apply a state rule, which this action appears to be, is not unconstitutional. Plain-

tiff does not allege intentional or purposeful discrimination, he simply charges that his district had at various times favored cronies. The court dismissed this allegation on the basis that plaintiff failed to state a claim upon which relief may be granted. Secondly, the plaintiff claims that he was denied substantive due process. The court reasoned that the plaintiff is asserting a property interest in a job not yet possessed and that it is not the sort of property/liberty interest to which substantive due process attaches. Substantive due process offers protection only for those interests found to be fundamental, such as marriage, procreation, and family life. They then dismissed the second claim. Lastly, the plaintiff claimed that retaliation by the board for his challenges of the hiring of noncertified individuals into administrative positions violated his First Amendment right to free speech. The court dismissed this charge saying that when an individual speaks out as an employee with personal concerns, and not as a citizen upon issues of public concern, the question is a state matter and a federal court is not the appropriate forum. All three claims were dismissed without prejudice to refiling in the appropriate state courts. *Coyne v. City of Somerville*, 770 F. Supp. 740 (D. Mass. 1991).

A blind teacher brought suit against his school district charging that their unlawful discriminatory policies and practices prevented him from obtaining an administration position within the system. The plaintiff alleges he is both certified and qualified to fill administrative positions and the district refused him placement on the list of district teachers eligible for principal positions solely because he is blind. The plaintiff contends that the school district violated section 504 of the Rehabilitation Act of 1964 and denied him equal protection and due process in violation of 42 U.S.C. § 1983. Although the plaintiff argued that as a disabled person the court should consider him as a suspect class and that only the strict scrutiny standard is applicable, the court disagreed saying that a disability is much like age in its effect and therefore only the rational basis test is applicable in this case. Although the court said that a blanket statement that no blind individual could be an administrator would be unlawful, it emphasized that to the extent the school did consider the plaintiff's disability, the consideration was rational and legal. Notwithstanding the above, the court believed that the school clearly demonstrated that even without the disability the

plaintiff was not qualified for an administrative position. Likewise, the court rejected the plaintiff's claim that the school denied him due process. The school did not establish a flat ban on hiring blind administrators. They interviewed him, evaluated his qualifications, and found him currently weak

in several legitimate areas. In regards to the 504 claim the court instructed the plaintiff that the issue would not be resolved in this case but that the plaintiff is entitled to bring an action directly under section 504. *Upshur v. Love*, 474 F. Supp. 332 (N.D. Ca. 1979).

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3601 SW 29TH, SUITE 223
TOPEKA, KANSAS 66614
(913) 273-3550